FEDERAL REGISTER

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Title 5—ADMINISTRATIVE PERSONNEL

Chapter I—Civil Service Commission

PART 39—TRAINING REGULATIONS

Prohibition of Training Through Non-Government Facilities Advocating Overthrow of Government by Force or Violence

Effective September 5, 1959, in order to implement section 14 of the Government Employees Training Act, § 39.308 is added to Part 39. The new section reads as follows:

§ 39.308 Prohibition of training through non-Government facilities advocating overthrow of the Government by force or violence.

(a) With respect to training by, in, or through an organization, the requirements of section 14 of the Act are met if it is ascertained that the organization is not included in the list of organizations designated by the Attorney General pursuant to section 12 of Executive Order 10450.

(b) With respect to training conducted by an individual with whom contractual or other arrangements are made directly, the requirements of section 14 of the Act are met if both of the following conditions are met:

(1) It is ascertained that the investigative files of the Commission contain no record that a determination has been made that a reasonable doubt exists concerning the individual's loyalty to the Government of the United States. Search of the investigative files of the Commission shall be made prior to contracting with or otherwise arranging for the services of individuals for training, except in emergency situations, under which circumstances such search shall be made as soon as possible.

(2) Subject to the exceptions stated hereinafter, the individual executes an affidavit, certificate, or express contractual warranty that he does not teach or advocate the overthrow of the Government of the United States by force or violence. This condition shall not apply (i) to individuals who perform training under oral or other informal arrangements for periods of sixteen hours or less within a single program; or (ii) to individuals who perform training without compensation by the Government (whether or not the Government provides payment or reimbursement for their travel and subsistence incident to such training).

(c) This section shall apply to all contractual or other arrangements for training made after the effective date of this section.

(Sec. 6, 72 Stat. 329)

UNITED STATES CIVIL SERVICE COMMISSION,
[SEAL] WM. C. HULL,
Executive Assistant.

[F.R. Doc. 59-6492; Filed, Aug. 5, 1959; 8:48 a.m.]

Title 7—AGRICULTURE

Chapter IX—Agricultural Marketing Service (Marketing Agreements and Orders), Department of Agriculture

PART 951—TOKAY GRAPES GROWN IN SAN JOAQUIN COUNTY, CALIFORNIA

Determination Relative to Expenses and Fixing of Rate of Assessment for 1959–60 Season

Pursuant to the marketing agreement, as amended, and Order No. 51, as amended (7 CFR Part 951; 24 F.R. 1238), regulating the handling of Tokay grapes grown in San Joaquin County, California, effective under the applicable provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), and upon the basis of the proposals submitted by the Industry Committee (established pursuant to said amended marketing agreement and order), it is hereby found and determined that:

§ 951.214 Expenses and rate of assessment for the 1959–60 season.

(a) *Expenses.* Expenses that are reasonable and likely to be incurred by the Industry Committee, established pursuant to the provisions of the aforesaid amended marketing agreement and order, to enable such committee to per-

(Continued on p. 6297)

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CODIFICATION GUIDE

A numerical list of the parts of the Code of Federal Regulations affected by documents published in this issue. Proposed rules, as opposed to final actions, are identified as such.

A Cumulative Codification Guide covering the current month appears at the end of each issue beginning with the second issue of the month.

form its functions, in accordance with the provisions thereof, during the season beginning April 1, 1959, and ending on March 31, 1960, both dates inclusive, will amount to $36,675.00.

(b) *Rate of assessment.* The rate of assessment, which each handler who first ships Tokay grapes shall pay as his pro rata share of the aforesaid expenses in accordance with the applicable provisions of said amended marketing agreement and order is hereby fixed at nine mills ($0.009) per standard package, or the equivalent thereof in weight, of Tokay grapes shipped by such handler during said season.

It is hereby further found that it is impracticable, unnecessary, and contrary to the public interest to give preliminary notice, and engage in public rule-making procedure, and good cause exists for not postponing the effective date hereof until 30 days after publication in the FEDERAL REGISTER (5 U.S.C. 1001–1011) in that (1) shipments of the current crop of Tokay grapes grown in San Joaquin County, California, are expected to begin on or about August 10, 1959; (2) the rate of assessment is, in accordance with the amended marketing agreement and order, applicable to all Tokay grapes shipped during the 1959–60 season; and (3) it is essential that the specification of the assessment be issued immediately so that the aforesaid assessments may be collected, and thereby enable the Industry Committee to perform its duties and functions in accordance with said amended marketing agreement and order.

As used herein, the terms "handler," "ships," "shipped," "season," and "standard package" shall have the same meaning as when used in said amended marketing agreement and order. (Secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674.)

Dated, July 31, 1959, to become effective upon publication in the FEDERAL REGISTER.

S. R. SMITH,
Director, Fruit and Vegetable Division, Agricultural Marketing Service.

[F.R. Doc. 59–6475; Filed, Aug. 5, 1959; 8:47 a.m.]

Title 32—NATIONAL DEFENSE

Chapter VII—Department of the Air Force

SUBCHAPTER J—AIR FORCE PROCUREMENT INSTRUCTIONS

MISCELLANEOUS AMENDMENTS TO SUBCHAPTER

The following miscellaneous amendments are issued to this subchapter:

PART 1008—TERMINATION OF CONTRACTS

Subpart B—Definition of Terms

§ 1008.262 [Deletion]

1. Section 1008.262 is deleted.

2. In § 1008.304, paragraphs (b) through (g) are deleted and new paragraphs (b) through (g) are substituted therefor. Paragraph (l) is deleted.

§ 1008.304 Notice of termination.

* * * * *

(b) *Initiation of AFPI Form 49, "Termination authority."* (1) Part 1, AFPI Form 49 entitled "Termination Request", will be issued by the activity (except Hq USAF and MIPR actions) which initiated or subsequently assumes responsibility for the original request for procurement (includes "call" and "open" type contracts).

(2) Part 1, AFPI Form 49, "Termination Request," will set forth the following information with respect to the termination:

(i) *Item 1.* Enter the full designation of the procuring contracting office, including organizational code and any other appropriate identifying information, such as particular contracting officer or buyer.

NOTE: In activities, such as base procurement, where the multiple functions of: (*a*) Originating requests for procurement, (*b*) procuring, and (*c*) administering the contract are consolidated, subdivisions (i) and (ii) of this subparagraph will be completed to the extent necessary to reflect the multiple functions.

(ii) *Item 2.* Enter the full designation of the activity originating the request for procurement, including: (*a*) Initiator, (*b*) organizational code, and (*c*) telephone extension.

(iii) *Item 3.* Enter the name of contractor.

(iv) *Item 4.* Enter the contractor's address, including: (*a*) Street and number, (*b*) city, (*c*) postal zone, and (*d*) state, as appropriate.

(v) *Item 5.* Enter the contract or purchase order number.

(vi) *Item 6.* Enter the property class when specified.

(vii) *Item 7.* Indicate whether termination is to be effective: (*a*) Immediately, (*b*) on an exact future date to be specified, or (*c*) for other reasons to be fully explained under Part III, "Remarks."

(viii) *Item 8A.* For convenience of the Government termination, indicate either (*a*) partial or (*b*) complete. Unexcusable contractual delinquency is normally a basis for default investigation.

NOTE: The originator of a recommendation of a termination for convenience of the Government must thoroughly assure himself no actionable basis exists for an investigation for default termination under the provisions of Subpart T of this part, Default.

(ix) *Item 8B.* For Default of contractor termination see Subpart T of this part, Default.

(x) *Item 9.* Furnish brief factual résumé of justification for termination. Justification based on "no further requirements by the Government" will require an explanation for the lack of requirement indicating why termination is more economically feasible than acceptance of the item(s). When used by AMC supply activities, only, a statement of justification indicating the program against which the computation was accomplished will be sufficient justification, e.g., "Reduction in Requirements as a result of (specific program or authority). (See paragraph (a) of this section.)

(xi) *Item 10.* List items to be terminated. (Note: If contract is classified prepare according to paragraph (j) of this section.) For unclassified contracts list: (*a*) contract items number, with only one item to a line, (*b*) quantity to be terminated, (*c*) unit of measure, such as each, pair, or assemblies, (*d*) adequate description of nomenclature as should appear in the termination notice, and (*e*) total estimated value of items to be terminated, listing each item separately (exact amount, or careful estimate if exact cannot be ascertained) with a Grand Total of all items terminated.

(xii) *Item 11.* Item 11A, 11B, 11C, and 11D are self-explanatory. Accurate and complete information assists the contracting officer effecting settlement of the termination and reduces or eliminates the necessity for post termination inquiry to the originating activity regarding disposition of inventory and tooling.

(xiii) *Item 12.* Coordination and approval are to be held to absolute minimum to insure expeditious processing of the Termination Request. Obtain only the necessary coordination prior to forwarding AFPI Form 49 to procuring contracting office. Informational routing will be accomplished after approval and dispatch.

(3) Preparation to the maximum extent possible and dispatch of Part I, AFPI Form 49, "Termination Request," will be handled on a most expedited basis. No hard and fast rules are hereby formulated due to varying conditions. Major air command implementation of this provision will apply. However, it is expected that AFPI Form 49 will be hand carried to the procuring contracting office wherever possible. When the initiator of the procurement is located some distance from the procuring contracting office air mail will be used; under conditions involving substantial production costs for each day the items to be terminated remain on contract, the use of long distance telephone (confirming AFPI Form 49 required), or electrically transmitted message containing all information required by Part I, AFPI Form 49 (confirming AFPI Form 49 not required) are authorized. Each copy of the AFPI Form 49 will have a time and date stamp affixed to denote its time of dispatch to the procuring contracting office.

(4) An original and five copies of AFPI Form 49 will be prepared. The original and four copies will be forwarded, as set forth in subparagraph (3) of this paragraph, with the activity originating the request retaining one copy for file purposes.

(5) Termination requests may also be issued by MIPR action or Hq USAF directive in a format not identical to Part I, AFPI Form 49 (see paragraph (c)(2) of this section).

(6) Special procedures for handling deletions or reductions of spare parts from AF contracts containing provisioning documents are set forth in paragraph (k) of this section.

(c) *Responsibilities of the procuring contracting office regarding termination.* (1) Receive and immediately date stamp (hour and date) all copies of AFPI Form 49 (Part I completed by the activity initiating the original request for procurement) or electrically transmitted message in lieu of Part I, AFPI Form 49 (see subparagraph (7) of this paragraph) and conduct a review to ascertain completeness and accuracy.

NOTE: Insofar as possible resolve any minor problems on Part I, AFPI Form 49, without returning to originator.

(2) Process instructions to terminate under a MIPR, MCP Form 190, or (in the case of aircraft termination) Hq USAF directive (see paragraph (b)(5) of this section). In any of the aforementioned events, if termination is warranted, the procuring contracting officer (or buyer) will prepare Part I, AFPI Form 49, as applicable, and will attach one copy of the instructions (date and hour of receipt indicated on all copies) to each copy of the AFPI Form 49.

(3) Select the source or sources to be terminated when the termination request does not specify the source and more than one source is producing or developing the end items.

(4) Request the appropriate supply activity to furnish instructions relating to termination of spares, spare parts, tools, and ground handling equipment pertaining to the particular end item terminated, when spares, etc., are called for under the contract. However, preparation and processing of an AFPI Form 49 will not be withheld pending receipt of instructions pertaining to spare parts. The AFPI Form 49 may later be amended to provide instructions regarding spare parts by use of electrically transmitted message or DD Form 96, "Disposition Form".

(5) At Hq AMC and WADC, notify the appropriate laboratory of WADC of all terminations which may directly or indirectly affect engineering projects or contracts either contemplated or in progress. WADC will, upon receipt of such notice, examine applicable contracts or projects and initiate action to effect termination or curtailment when considered necessary or desirable.

(6) Part II, AFPI Form 49, "Termination Authorization," prepared by the procuring contracting office, will set forth

the following information with respect to the termination:

(i) *Item 13.* Enter the name of the local readjustment activity, citing code, as appropriate.

(ii) *Item 14.* Enter full designation of procuring contracting office, including: (*a*) Name of initiator, (*b*) organizational code, and (*c*) telephone extension.

(iii) *Item 15.* Self-explanatory.

(iv) *Item 16A.* See paragraph (b)(2)(viii) of this section.

(v) *Item 16B.* See Subpart T of this Part. (Default).

(vi) *Item 17.* See paragraph (b)(2)(x) of this section. Comment upon justification given under Item 9, Part I, AFPI Form 49 and supplement as warranted.

(vii) *Item 18.* See paragraph (b)(2)(vii) of this section.

(viii) *Items 19 through 26.* Self-explanatory.

(ix) *Item 27.* Only essential coordination and approval will be effected prior to dispatch of the AFPI Form 49 to the local readjustment activity. Informational routing may be accomplished concurrently, or later, but will not delay the action required hereunder.

(7) Complete Parts I, II, and III, AFPI Form 49, as applicable, and hand carry, if possible, an original and three copies (time and date stamp on all copies to denote time of dispatch) to the local readjustment activity, or to offices or individuals assigned the readjustment function. Retain one copy of AFPI Form 49 for procuring contracting office files. If AFPI Form 49 cannot be hand carried to the readjustment activity for valid reasons, such as excessive distances, the next most expeditious means of dispatch of the form will be utilized.

(8) Procuring contracting offices, within AMC, will complete all termination action within 8 working hours. Any delay in excess of 8 working hours will be explained under Part III, AFPI Form 49.

(9) At Hq AMC, only, send a copy of the AFPI Form 49 to Support Division (MCPS) when the contract involves GFAE.

(d) *Responsibilities of readjustment divisions or offices or individuals assigned the readjustment function.* (1) Receive and immediately date stamp (hour and date) all copies of the Termination Authority, AFPI Form 49. Assign Termination Authority Docket number pursuant to paragraph (f) of this section.

(2) Review and analyze the AFPI Form 49, the contract (including "call" or "open" type contracts) and related documents to ascertain whether the termination should be for (i) the convenience of the Government or (ii) for the default of the contractor. In all termination matters the Government's interest must be fully protected, and the responsibility rests with the termination contracting officer to insure, through his own personal and diligent efforts, that his independent decision actually results in a convenience to the Government. If it is determined that any actionable basis for default exists, including contractor delinquencies under the delivery schedule, the termination contracting officer will, regardless of the recommendations under Items 8 and 16 of AFPI Form 49, follow the procedures for default investigation as set forth in Subpart T of this Part.

(3) Issue a Notice of Termination for convenience of the Government to the contractor (including "calls" and "open" type contracts—Definitions: §§ 1003.405–5 and 1003.405–50 of this chapter) as soon as the termination contracting officer personally ascertains such action is justified. The termination notice will normally be issued to the contractor within eight working hours after receipt of the AFPI Form 49; however, the quality of the review and analysis of the termination will be the paramount consideration. Any delay in excess of 8 hours will be explained and justified under Part III, AFPI Form 49.

(4) Maintain a permanent type docket ledger to include, but not limited to, the following:

NOTE: No locally designed forms will be established for this purpose.

(i) Termination Authority Docket Number.

(ii) Contract or Purchase Order Number.

(iii) Name of contractor.

(iv) Termination Authority:

(*a*) Part I dated _____.

(*b*) Part II dated _____.

(*c*) Date and hour received by readjustment activity.

(v) Code or identification of procuring contracting office submitting AFPI Form 49.

(vi) Contract price items terminated.

(vii) Date Termination Notice issued.

(viii) Date termination assigned for settlement.

(5) Assign the termination case for settlement by completing Part IV, AFPI Form 49.

(i) Termination Staff Branch (MCPPJT), Hq AMC, will:

(*a*) Assign the termination case for settlement directly to an APD or AFPR, or to a termination contracting officer in Readjustment Staff Division (MCPPJ), Hq AMC.

(*b*) Prepare and maintain a permanent type docket file.

(ii) AMA and AF depot readjustment activities will assign termination cases for settlement as follows:

(*a*) AMA readjustment branch will assign the termination case for settlement to one of its APD's or AFPR's or to a termination contracting officer in its readjustment branch. Where a contract has been issued by one AMA and administered by another AMA or subordinate facility, the readjustment branch of the AMA which issued the contract will terminate the contract and refer the termination case for settlement directly to the APD, AFPR, or other activity administering the contract (see paragraph (e) of this section). Concurrently with the direct assignment the issuing AMA readjustment branch will forward three copies AFPI Form 50, one copy of AFPI Form 49, and one copy of the Termination Notice to Commander, AMC, attn: MCPPJS; the AMA exercising supervision over the aforementioned administering activity will receive one copy of AFPI Form 49, AFPI Form 50, and the Termination Notice.

(*b*) AF depot readjustment offices pursuant to § 1008.302–53 will terminate their contracts for convenience of the Government and may enter into settlement agreements (except construction contracts) where the settlement amount does not exceed $1,000. AF depot issued and administered contracts, when terminated, will be assigned directly to the APD or other designated activity, geographically nearest to the terminated contractor for settlement of all construction contract terminations involving costs and all other terminations wherein the settlement amount exceeds $1,000. Concurrently with the direct assignment, the issuing AF depot readjustment office will forward three copies of AFPI Form 50, one copy AFPI Form 49, and one copy of Termination Notice to Commander, AMC, attn: MCPPJS; the AMA exercising supervision over the settling activity will receive one copy of AFPI Form 49, AFPI Form 50, and the Termination Notice. Where an AF depot issued contract has been administered by a facility other than the issuing AF depot, the settlement of its termination (partial or complete) involving settlement costs of less than $1,000 will be handled by the administering facility unless retained by the AF depot for settlement. If the AF depot retains settlement responsibility the administering facility will be notified accordingly.

(iii) AMA and AF depot readjustment activity may assign the termination case for settlement to their base procurement contracting officer provided that:

(*a*) *Other than construction contracts.* The termination will result in no cost to the Government or the contractor's termination claim does not exceed $1,000.

(*b*) *Construction contracts.* The termination will result in no cost to the Government. In the matter of construction contracts involving any costs the readjustment activity will, after issuing the Notice of Termination refer the case to the readjustment office of AMA in whose geographical jurisdiction the terminated contractor is located. The readjustment activity will consider the following factors in determining the assignment of the settlement:

(*1*) If the contract is of a "lump sum" type, the case will be referred to the appropriate APD or AFPR. The term "lump sum" as used herein refers to those construction contracts wherein a total amount is set forth as the contract price without designating specific amounts for separate items of work under the contract.

(2) If separate unit prices have been established under the contract for the separate items of work or if it is clearly severable and no payments have been made with respect to the terminated portion of the contract so that the termination can be accomplished at "no cost" to the Government or for an amount not exceeding $1,000, the AMA readjustment office may, at its discretion, assign the settlement to a base procurement activity.

(iv) ARDC termination cases will be sent to the Commander, AMC, attn: MCPPJT, for assignment and settlement when the contractor's termination claim exceeds $1,000, except: (a) RADC and AFCRC will settle their own termination cases, and (b) European Office, ARDC, cases will be assigned to AMFEA for settlement.

(v) Base procurement activities at major air commands (other than AMC and ARDC) within the continental United States will assign the termination case (other than construction contracts) for settlement to contracting officers appointed to perform the readjustment function when it is known the settlement will be at no cost to the Government or not in excess of $1,000.

(a) *Other than construction contracts.* Contracting officers who issue the Notice of Termination will include in the notice to the contractor a request for information as to whether or not the contractor intends to submit a termination claim. If on the basis of the contractor's information it appears that the settlement will not be in excess of $1,000 or if it is known that the termination will result in "no cost" to the Government, the base procurement office may process and consummate the settlement of the case regardless of the contract price of items terminated. If the settlement costs will exceed $1,000 the base procurement activity will refer the matter to the readjustment office of the AMA in whose geographical jurisdiction the terminated contractor is located.

(b) *Construction contracts.* When the termination will result in no cost to the Government, the base procurement activity will retain the case and accomplish the necessary supplemental agreement. If the termination involves any costs the base procurement activity will refer the matter to the readjustment office of the AMA in whose geographical jurisdiction the terminated contractor is located.

(vi) Oversea commands, air materiel forces, air attaches, and AF foreign missions will assign termination cases for settlement to the office authorized by the oversea commander (except PACAF, Commander, AMFEA, air attache, or chief foreign mission to handle the readjustment function. In the case of PACAF and AMFPA, the Commander, AMFPA, will authorize an office to perform the readjustment function.

(6) When necessary, return termination cases to the initiator(s) of the AFPI Form 49 for cancellation, correction, or any other reasons.

(7) Maintain staff surveillance over termination settlement and plant clearance of all termination cases.

(8) Maintain proper records reflecting the status of settlement of termination cases.

NOTE: The above procedures will be used only within the scope of authority set forth in §§ 1008.302–51 and 1008.302–56. All cases beyond this scope will be referred to MCPPJ for issuance of Notice of Termination and/or assignment and settlement.

(e) *Referral of cases.* Whenever in this section a termination case is required to be referred to an APD or AFPR for settlement, the office referring the case will transmit the following information and documents:

(1) Copy of the contract to be terminated and all change orders, supplements, and amendments thereto, unless the office to which the case is being referred possesses such documents.

(2) A copy of the AFPI Form 49.

(3) Information as to the existence of assignees, creditors, or sureties having an interest in the contract, if any, with names and addresses of such persons.

(4) Total contract price as of the last effective amendment.

(5) Two executed copies of AFPI Form 50.

(6) Whether any claim against the contractor in favor of the Government is known to exist and what inquiries have been made to discover the existence of such a claim.

(7) Four Copies of the Termination Notice with proof of service.

(8) Any other information which may be helpful in negotiating the settlement.

(f) *Assignment of termination authority docket number by termination activity.* All Termination Notices relating to convenience type cost terminations issued by an activity of AMC, will be identified by a Termination Authority Docket Number. In AMA terminations the readjustment office at the terminating AMA will be responsible for the assignment of a termination docket number; in AF depot terminations the individual(s) assigned responsibility for readjustment matters at the terminating depot will be responsible for assignment of a termination docket number. The first and second digits of the termination docket number will identify the origin of the Notice of Termination and the AMA responsible for settlement, respectively. The third and subsequent digits will identify the numerical sequence of the termination action. For purposes of identifying Hq AMC, AMA's, AF depots, Department of the Navy, and no cost terminations the following codes are assigned:

(1) Hq AMC and the AMA's will be identified by code numbers:

1—MAAMA	4—OCAMA	7—WRAMA
2—MOAMA	5—SMAMA	8—Hq AMC
3—OOAMA	6—SAAMA	9—SBAMA

(2) AF depots will be identified by code letters:

C—Maywood	M—Memphis
G—Gadsden	R—Rome
D—Dayton	T—Topeka
S—Shelby	

(3) All cases assigned to the Department of the Navy for settlement, the second digit will be identified by code letter: N—Navy.

(4) No cost terminations. The second digit code number in all cases will be: O—No Cost.

(g) *Preparation of notice of termination.* A priority Telegraphic Notice of Termination as set forth in § 8.707–1 of this title will be used to notify the contractor of a convenience termination except when factors such as amount of contract, distance involved, effective date of termination, and status of contract indicate that the use of a Letter Notice of Termination as set forth in § 8.707–2 of this title will not result in additional termination costs. Subsequent to transmittal of a Telegraphic Notice of Termination, a confirming Letter Notice of Termination as set forth in § 8.707–2 of this title will be sent (Registered Mail—Return Receipt) to the contractor. A Letter Notice of Termination, original or confirming, will contain in duplicate an acknowledgment of notice. When executed and returned by the contractor, the two acknowledged copies will be proof of service, or personal service may be made upon a responsible representative and a proof of service indicating the date of service will be executed. The Notice of Termination should inform the contractor of the office to which any inquiries relative to the termination should be addressed. Where a termination case is referred for settlement at the time the contract is terminated, the office to which the case is referred should be listed in the Notice of Termination. Where the termination case is referred to another office subsequent to the issuance of the Notice of Termination the contractor should be so informed. The termination contracting officer in the office which issued the Notice of Termination will be responsible for sending a copy of the convenience termination notice to each of the following:

(1) Any assignee of record who has filed a proper Notice of Assignment with respect to the terminated contract.

(2) Any guarantor or surety of the contractor whose obligation relates to the terminated contract.

(3) The finance officer designated to make payments under the contract.

(4) The accounting activity recording transactions affecting the funds applicable to the contract.

(5) Within AMC activities only:

(i) Two copies of the confirming or letter termination notice, immediately upon reproduction, to the initiator of Part I, (Item 2) AFPI Form 49, and citing RIR Log Number.

(ii) Subsequently, and upon return of the executed copies of the acknowledgment by the contractor to the readjustment activity, the initiator of Part I, (Item 2) AFPI Form 49 will be furnished one copy thereof for record purposes, and citing RIR Log Number.

(6) Other activities according to the distribution directives applicable to the particular procuring activity that issued the Notice of Termination.

Subpart E—Settlement of Contracts Terminated for Convenience—General

1. Section 1008.518–7 is added as follows:

§ 1008.518–7 Approval or ratification of subcontract settlements.

(a) Except where settlement of subcontractors' claims in the amount of $10,000 or less has been authorized, all settlement proposals submitted from any prime contractor or subcontractor must be reviewed and approved or ratified by the termination contracting officer.

(b) The termination contracting officer may delegate the authority to settle any subcontract termination claims relating to a terminated prime contract being handled by him, irrespective of the amount thereof, to a contracting officer having jurisdiction over, or located at, the subcontractor's facilities. In such event, the subcontract settlements effected by the designated contracting officer will be accepted as final and conclusive by the termination contracting officer delegating the authority.

2. In § 1008.518–11, paragraph (c) is revised as follows:

§ 1008.518–11 Government assistance in settlement of subcontracts.

* * * * *

(c) *Inter-AMA referral for negotiation.* The termination contracting officer will obtain the prime contractor's consent and prepare in triplicate a letter of transmittal of the subcontract case for negotiation. The letter of transmittal will be sent to the appropriate referral APD or AFPRO with information copies of the transmittal letter to the AMA's having jurisdiction of both the prime and subcontractors and to the Commander, AMC, attn: MCPPJS. The letter of transmittal will contain (or inclose in triplicate) the following:

Subpart F—Termination Inventory

1. Sections 1008.611, 1008.611–50, 1008.611–51, 1008.611–52 and 1008.611–53 are added as follows:

§ 1008.611 Special machinery tooling and equipment.

Excess special tooling will be screened in the following cases.

(a) *Termination.*

(b) *Contract completion.* Screening will be accomplished according to § 1008.611–53 if possible.

(c) *Engineering changes.* Screening is required unless:

(1) The part produced by the new tooling is interchangeable with the part produced by the old tooling.

(2) The old part can be produced with the new tooling.

(3) The old tooling was never used in the manufacture of an end item.

(d) *Production method changes.* Screening is required unless:

(1) Interchangeability of the items produced is not affected.

(2) The contractor has sufficient tooling to meet foreseeable production needs.

(3) The design contractor, if one exists, has no foreseeable need for the tooling.

(e) *Exceptions.* Special tooling need not be screened if:

(1) The acquisition cost of the total amount of tooling provided under the contract is less than $1000.

(2) The tooling is in R–3, R–4 or X conditions.

(3) The tooling is scrap or salvage as defined in §§ 8.101–16 and 8.101–17 of this title.

§ 1008.611–50 Duties of the local plant clearance officer.

When screening is required, the local plant clearance officer will insure that:

(a) The contractor properly lists on inventory schedules (§ 8.802–7 of this title, DD Form 545, BOB No. 22–RO 77) by AF part number the parts produced by the tooling, or in the absence of part numbers furnish a description of the tooling. Program screening (§ 1008.611–53) will not require schedules.

(b) A letter of transmittal is prepared by the plant clearance officer stating the following information.

(1) Name of contractor to which tooling is excess.

(2) Design contractor if other than subparagraph (1) of this paragraph.

(3) Contract number.

(4) Type of contract (i.e. supply or R&D).

(5) Plant clearance officer's case number.

(6) Docket number if applicable.

(7) Acquisition cost of the tooling (estimate will suffice).

(8) Description of the end item produced by the tooling (AF part number if assigned).

(9) Designation of the weapons system for which subparagraph (8) of this paragraph is a component (if applicable).

(10) Condition of the tooling.

(11) Name and location of responsible AF buyer.

(12) Indicate contract clause which controls contractor's obligations with respect to special tooling.

(13) Why the tooling is excess to contractor's requirements.

(14) Whether the tooling has been screened by the prime contractor and found excess to his needs for possible utilization as indicated in this subparagraph:

(i) Current or future use in the manufacture of spare parts under the provisioning program.

(ii) Current or future use on other Government contracts.

(iii) Current or future use by subcontractors on Government contracts.

(15) The professional recommendation of the plant clearance officer concerning the disposal of the tooling based on discussions with contractor personnel and other information.

(c) The inventory schedules and letters of transmittal are sent to the appropriate screening agencies.

§ 1008.611–51 Screening agencies.

(a) *AMA or depot.* Ten copies of inventory schedules and letters of transmittal will be sent to the office with plant clearance responsibility at the AMA or depot prime for the item produced by the tooling. Screening procedures will be established within the AMA or depot according to AMCR 68–1 to determine if interested activities (supply, maintenance, modification, IRAN, MAP, off-shore procurement, weapons phasing, and program groups) have potential requirements, and to develop disposal recommendations. Screening results will be summarized, and a disposal recommendation sent to AMC (MCPRP) within 35 days.

(b) *Hq AMC (MCPRP).* (1) Five copies of inventory schedules and transmittal letters will be sent to MCPRP if the tooling is generated under an R & D contract. In all other instances three copies will be sent to MCPRP concurrently with submission of schedules to the prime AMA or depot.

(2) Final disposal instructions will be issued by MCPRP to the local plant clearance officer with an information copy to the prime AMA or depot.

§ 1008.611–52 Disposal.

(a) All disposals of special tooling will be executed according to the provisions of Subpart F of this part.

(b) Instructions to dispose of tooling used in the fabrication of a specific end item under a prime contract will, unless otherwise stated, be sufficient authority to dispose of tooling required for the same end item at a subcontractor's plant.

(c) All agreements for the storage of special tooling will be executed according to § 1008.612, upon written authority from MCPRP.

§ 1008.611–53 Program screening.

The term "program screening" means the process of screening special tooling related to a complete airframe or major component before the tooling becomes excess due to production phase out. This program will be used whenever possible. The general procedures are as follows:

(a) The local plant clearance officer will determine through the contractor when phase outs are contemplated, and advise the plant clearance officer at the prime AMA or AF depot by letter concurrently with MCPRP. The letter will state the end item produced, acquisition cost, condition of the tooling and the approximate date of complete phase out.

(b) Screening procedures will be established within the AMA or depot to determine whether interested activities (supply, maintenance, MAP, weapons phasing, and program groups) have possible requirements. Upon completion of AMA or depot screening the results will be summarized and a recommendation for disposal will be sent to AMC (MCPRP).

(c) Upon approval by Hq AMC, the AMA plant clearance officer will issue disposal instructions to the local plant clearance officer.

Subpart G—Forms

1. In § 1008.761, paragraph (c) is deleted and the following is substituted therefor:

§ 1008.761 Default letters.

* * * * *

(c) The Show Cause Notice referred to in § 1008.2006(e) should be in substantially the following format:

The Government hereby gives a notice of its intention to terminate your Contract No. ------, under the provisions of Clause ------ (Default) thereof.

Pending a final decision in this matter, it will be necessary to determine whether your failure to perform arose out of causes beyond your control and without fault or negligence on your part. Accordingly, you are hereby afforded the opportunity to present, in writing, any facts bearing on this question to Commander, (insert complete address of activity to whom default investigation is being referred) with copy thereof to the undersigned for information, on or before

---------- (at least 10 days after date of this (date) notice). Failure of the contractor to present any excuses within this time may be considered as an admission that none exist.

(Optional paragraph. Pending decision you are instructed to stop work and to make no further commitments under subject contract and to advise all subcontractors and suppliers to do likewise.)

NOTE: Use stop work sentences only in the event there are no further requirements for the items contained in construction contracts.

Subpart T—Cancellation for Default

1. Sections 1008.2000 and 1008.2001 are added as follows:

§ 1008.2000 Scope of subpart.

This subpart sets forth (a) circumstances under which AF contracts are terminated for default, (b) authority to terminate for default, and (c) responsibilities and procedures in connection with default actions. In addition, guidance is furnished as to the procedure to follow when a contract does not contain a Default clause and the contract should be terminated for "Breach of Contract" on the part of the contractor.

§ 1008.2001 Applicability of subpart.

This subpart applies to all AF contracts on which termination for default or "Breach of Contract" is contemplated or effected. As pertains to service or construction contracts, references made herein to "contract delivery schedule" will have application to "contract delivery or performance schedules."

2. Sections 1008.2002, 1008.2003 and 1008.2004 are deleted and the following substituted therefor:

§ 1008.2002 General.

(a) *Air Force policy on use of default termination.* It is AF policy to use default termination procedure when a contractor without excusable cause fails to comply with the terms and conditions of the contract and, as a result of such failure, cannot deliver to the Air Force the supplies and services called for under the contract in the manner and within the time which the Air Force has need for such supplies and services. It is not AF policy to use default termination as a punitive measure but to use it as a method to insure the contractor's adherence to his contractual obligations and to protect the Government from losses which the Government may sustain as a result of the contractor's failure to comply with its contract obligations.

(b) *Estimated administrative expense of default termination.* It is estimated that the cost to the Government (exclusive of costs involved in any appeal by the contractor) for processing a termination for default involves a minimum administrative expense of $200. Therefore, in cases where the procuring contracting officer is of the opinion that default action is warranted, but determines by contacting other potential suppliers that the excess costs of reprocurement will not exceed $200, a "no cost" convenience supplemental agreement may be entered into with the contractor if the procuring contracting officer deems such action to be in the best interests of the Government, subject to the following:

(1) Prepare a "statement of findings" for the contract file stating, along with the reasons therefor, the estimated excess costs of reprocurement and the sources that were contacted to obtain such estimate.

(2) In lieu of the preparation of AFPI Form 49, "Termination Authority," obtain coordination on the aforementioned "statement of findings" from a termination contracting officer authorized to perform the default termination function as set forth in § 1008.2003.

(3) Obtain or assign a Termination Authority Docket Number for the "no cost" termination.

(4) Enter into a "no cost" termination supplemental agreement as set forth in §§ 8.712–6 or 8.712–7 of this title.

(5) Provide the readjustment activity (§ 1008.2003) with one copy of the "statement of findings" and a copy of the termination supplemental agreement for incorporation in the docket file.

(c) *Elections by the Government concerning inventory.* Under a fixed-price type contract terminated for the default of a contractor, the Government may elect to take the inventory or any part thereof and pay the contractor according to the provisions of the Default clause; or the Government may elect not to take any of the inventory and pay the contractor only for supplies or services previously delivered or furnished. In either event, the contractor may be held liable to the Government for any excess costs the Government may incur in reprocuring the items terminated. In the case of cost-reimbursement type contracts terminated for default, the contractor is normally reimbursed his allowable costs and the fee reduced where appropriate. When a time-and-material contract is terminated for default, the contractor is normally reimbursed his allowable costs less the profit factor. In defaults involving cost-reimbursement and time-and-material contracts, the Government does not generally hold the contractor liable for excess costs of reprocurement.

(d) *Determination of adverse effects that may result from default termination.* In some few instances it may be determined by a procuring contracting officer, or higher authority, that a default termination of a particular contract would not be in the best interests of the Government because such a termination would have adverse effects upon production under other Government contracts. In such instances the matter should be referred to the Readjustment Staff Division (MCPPJ), Hq AMC for advice and guidance as to whether the Government may elect not to exercise its rights under the default provisions of the contract on the premise that such action would not be in the best interests of the Government.

(e) *Breach of contract on the part of the contractor.* Where a contract does not contain a clause providing for termination by default and the contractor fails or refuses to contractually adhere to the terms of the contract, the Government is not without a remedy. The Government may put the contractor on notice that the contract has been "breached" and the Government will not thereafter accept or pay for the goods or services that are the subject of the "Breach of Contract" (see paragraph (f) (1) of this section). A "Breach of Contract" case will be processed to a termination contracting officer without the prior issuance of "show cause" or "cure" type notices as prescribed by § 1008.761. Only termination contracting officers authorized to terminate contracts for default of the contractor according to § 1008.2003 are authorized to issue "Breach of Contract" notices. (See § 1008.2011.)

(f) *Causes of default.* There are normally three general causes for terminating a contract for default of the contractor:

(1) *Failure to deliver.* If the contractor fails to deliver the supplies or perform the services within the time specified in the contract the right (in the absence of excusable or Government caused delays) has accrued to the Government to terminate for default. In addition, if the contractor does make timely delivery, but delivers defective supplies or improperly performs services, and the contractor is unable to take corrective action within the unexpired delivery schedule period, the Government also has the right to terminate for default.

(2) *Failure to make progress.* If it is ascertained during the period of the contract delivery schedule that the contractor is failing to make satisfactory progress so as to endanger performance according to the terms of the contract, the contractor should immediately be put on written notice (Registered Mail—Return Receipt) by the administrative contracting officer under the appropriate provisions of the Default clause contained in the contract. The contracting officer must notify the contractor that a period of 10 days after receipt of notice (or such longer period as the contracting officer may authorize in writing) will be allowed to cure such failures (see §§ 1008.2004(a) and 1008.2005). The "cure" notice (see § 1008.761(a)(2)) from the administrative contracting officer must set forth the nature and extent of the defects the contractor is notified to "cure," and, as deemed appropriate, the administrative contracting officer may call the contractor's attention to that portion of a specification which is applicable to a defective item(s). The period of time allowed by the contracting officer to cure contractor defects must be realistic, and based upon sound judgment. Where the allowed cure period is, through necessity, rather lengthy, the contracting officer may call upon the contractor within 10 days after issuance of the cure notice to show evidence of his actions to insure subsequent compliance with the "cure" notice. Upon the failure of the contractor to cure his defects, or show proper evidence of his actions to insure subsequent compliance within the cure period allowed, the Government should, subject to the limitations as set forth in the Default clause,

invoke termination for default of the contractor.

(3) *Failure to perform any of the other provisions of the contract.* If the contractor fails to perform any of the other provisions of the contract according to its terms and does not cure such defect within a period of 10 days after receipt of notice (or such longer period as the contracting officer may authorize in writing, see § 1008.761(a)(2)), the Government should, subject to the limitations as set forth in the Default clause, terminate the contract in whole or in part for default of the contractor. Special procedures are set forth in § 30.4 of this title in connection with violations of gratuities clauses.

(g) *Reprocurement as a result of default termination.* The standard Default clause usually contained in fixed-price contracts provides that the Government may procure, upon such terms and in such manner as the contracting officer may deem appropriate, supplies or services similar to those so terminated for default and the contractor will be liable to the Government for any excess costs for such similar supplies or services (see § 1008.2006(h)). Subsequent to default termination, timely reprocurement action must be taken with the view toward avoiding unnecessary and unjustified excess reprocurement costs. The contracting officer has no authority to waive any or all of the assessment of excess costs. Additional transportation charges incurred are considered a proper part of excess costs. If reprocurement of a like number of items of equal or better quality is accomplished at a cost below the price of the defaulted contract, the Government and not the defaulted contractor is entitled to the savings. However, the contractor will be liable for any excess costs incurred by the Government as a result of reprocurement of supplies or services similar to those terminated for default. Where there is default of two or more items under a contract, with some of those items being reprocured with resultant excess costs and the remainder being reprocured at a savings to the Government, the contractor is liable only for the net excess costs. For example, if the overall savings are greater than the overall excess costs for items reprocured, the Government sustains no loss, and excess costs cannot be assessed.

(h) *Appeal by the defaulted contractor.* The Disputes clause in most AF contracts permits the defaulted contractor to file appeals for one or both of the following reasons: (1) Default termination and (2) assessment of excess costs, if any. The appeal(s) are made by the defaulted contractor and addressed to the Secretary of the Air Force through the termination contracting officer (§ 1008.2003). Appeals are heard, usually at Washington, D.C., by the Armed Services Board of Contract Appeals as the duly appointed representative of the Secretary. The written appeal, or appeals, to the Secretary of the Air Force need not follow any particular form or format, however, the appellant must perfect the appeal(s) within the period of time allowed under the Disputes clause contained in the contract, and must set forth in the appeal notice the contract number, the nature of the appeal (either (i) default termination of the contract or (ii) assessment of excess costs), the name of the termination contracting officer, and the complete address of the appellant. The appellant need not furnish support or justification for his action to perfect an initial appeal notice. Upon receipt of the appeal the Armed Services Board of Contract Appeals will docket the case for hearing and advise the appellant in ample time as to necessary procedures to be followed (see § 1008.2010(e)).

(i) *Waiver or abandonment of delivery schedules.* In the event the contractor becomes delinquent under the terms of the delivery schedule, or any extensions thereof covered by supplemental agreements, and the Government affirmatively acquiesces in the delinquency by subsequent action such as (1) inspection or acceptance of delinquent items or (2) encouragement of the contractor's efforts to effect delivery, the Government is usually considered to have abandoned or waived the delivery schedule contained in the contract. Also, the failure of the Government to take appropriate action at time of or subsequent to contractor delinquency may be construed as a waiver of delivery schedule (see § 1008.2004(e)). If the termination contracting officer ascertains during his investigation (see § 1008.2010(d)(2)) that a waiver of the contractual delivery schedule is probable or an enforceable delivery schedule is nonexistent, he may terminate the contract for other good and valid reason, or in the alternative may proceed to re-establish a new and enforceable delivery schedule and hold his default termination decision in abeyance pending contractor performance thereunder. To the maximum extent possible there should be mutual agreement between the contractor and the Government that any re-established delivery schedule is realistic and possible of performance. The contractor should be afforded ample opportunity to set forth his reasons for prior nonperformance and should thereafter be requested to submit his written proposal to the Government, as his free act and voluntary deed, which will contain his firm and unqualified commitment to adhere to his proposed re-established delivery schedule. The termination contracting officer will give careful consideration to all aspects of the contractor's proposal and, if consistent with the Government's best interest, will immediately render a written acceptance to the contractor on behalf of the Government. In the event the Government and the contractor cannot reach mutual agreement as to a re-established delivery schedule the termination contracting officer may, as a unilateral action, establish a new delivery schedule. When such action becomes necessary the termination contracting officer will also incorporate in his brief relating to the case all facts and circumstances that have necessitated his unilateral action. Thereafter, the termination contracting officer will retain cognizance over any contract during the period of the re-established delivery schedule and will consider default termination at any time the contractor fails to adhere to any of the contractural provisions including the re-established delivery schedule. The administrative contracting officer will continue his administration of a contract concurrently with the termination contracting officer according to § 1008.2004(f).

(j) *Failure to deliver caused by the Government, actual or alleged.* At the expiration of the delivery schedule, as contained in the contract, the Government is not in a position to terminate for default upon nondelivery or nonconformance with the terms of the contract if:

(1) The Government has delayed in furnishing certain necessary equipment or material to the contractor, which it has obligated itself to do by the terms of the contract.

(2) Contractor is unduly delayed awaiting test results to be furnished by the Government under terms of the contract.

(3) The Government demands more than the contract actually required and thus makes delivery impossible.

(4) The Government furnishes technical specifications with which the contractor complies fully, but completed supplies do not pass the performance tests the Government desires.

Where it is clearly obvious that the contractor's nondelivery and/or nonconformance with contractual requirements are a direct result of Government delay or failure, an equitable adjustment in delivery schedule and/or other contract provisions may be necessary. Normally such adjustment(s) will be made by supplemental agreement to the contract. Where there is an area of controversy between the contractor and the Government as to causes for delay, such as illegible or incomplete printed specifications which were not detected until delivery of the first articles or completed supplies, the termination contracting officer (see § 1008.2003) will carefully investigate the allegations of the contractor to ascertain if the Government is completely or partially responsible for contractor delay or failures. If the termination contracting officer finds in favor of the contractor, adjustments and/or negotiations are authorized. Where it is not possible to assess fault or negligence solely to the contractor or the Government, the termination contracting officer may negotiate to resolve the controversy and permit performance to continue under the contract, as adjusted. Or in the alternative, if termination of the contract is desired by the Government the termination contracting officer may, in lieu of termination for default of the contractor, negotiate a pre-termination agreement provided such action is actually for the convenience and in the best interest of the Government.

§ 1008.2003 Authority to terminate for default.

(a) Within the United States, the authority to terminate contracts for de-

fault of the contractor will be exercised only by termination contracting officers within a readjustment activity specifically designated to terminate contracts for default by:

(1) Chief, Readjustment Staff Division, Hq AMC.

(2) Director of Procurement, Hq ARDC, and equivalent staff officers at subordinate ARDC activities except Hq WADC contracts for default will be exercised by termination contracting officers assigned to Hq AMC.

(3) Director of procurement and production, each AMA.

(4) Director of procurement and production, each AF Depot.

(b) Outside the United States, the authority to terminate contracts for default of the contractor will be exercised only by a termination contracting officer specifically designated to terminate contracts for default by:

(1) Oversea commanders.

(2) Air Attaches.

(3) Chiefs, AF Foreign Missions.

(4) Respective Commanders, MATS and SAC, in areas not within the jurisdiction of any other major commander.

(5) Commander, AMFPA.

(6) Commander, AMFEA.

Whenever this Subpart T prescribes action to be taken by readjustment activities as set forth in paragraph (a) of this section, such actions will be taken by the offices and/or individuals designated and authorized by the commanders set forth in this paragraph.

§ 1008.2004 Responsibility of administrative contracting officer.

Administrative contracting officers have primary responsibility for initiating prompt action pertaining to possible termination of contracts. Base procurement activities (see § 1008.2007).

(a) Pursuant to the Default clause contained in most AF contracts, the administrative contracting officer is empowered to furnish a "cure" notice (see § 1008.2002(f)(2)) to a contractor endangering performance of his contract. The procuring contracting officer and the office having production administrative responsibilities will receive an information copy of the aforementioned "cure" notice, however the administrative contracting officer may dispatch the "cure" notice on his own initiative and without prior procuring contracting officer coordination or approval. If the contractor fails or refuses to reply to the "cure" notice or does not cure the condition(s) endangering contractual performance, the administering activity, through the administrative contracting officer will immediately furnish full information to the procuring contracting officer by means of DD Form 375 plainly stamped or marked "Action Document" and recommend that the contractor be notified by a "show cause" letter of the possibility of the contract being terminated for default. (See §§ 1008.2006(b) and 1008.761.) A copy of the DD Form 375 from the administering activity to the procuring contracting officer will be furnished to (1) MCPRTT, Hq AMC, and (2) the readjustment activity located at the same installation as the procuring contracting officer.

(b) If the procuring contracting officer (see § 1008.2006(b)) concurs in the advisability of so notifying the contractor, the administrative contracting officer will within 5 days after receipt of the procuring contracting officer's concurrence notify the contractor by letter (Registered Mail—Return Receipt Requested) that the Government is considering termination for default by reason of the contractor's failure to comply with the delivery schedule, failure to make progress so as to endanger performance, or failure to comply with other contractual provisions (whichever is applicable).

(c) The contractor should be requested to submit within 10 days (or such longer time as the administrative contracting officer deems reasonable under the circumstances) its reasons why the contract should not be terminated for default. The letter by the administrative contracting officer (paragraph (b) of this section) should call the contractor's attention to the penalties that may be invoked if the contract is terminated for default. Suggested forms for this letter are set forth in § 1008.761(a). Before release, the letter (paragraph (b) of this section) should be coordinated with cognizant production and quality control personnel; after release no further action under the contract will be taken by production or quality control personnel without prior approval of the administrative contracting officer. One copy of the administrative contracting officer's letter to the contractor will be furnished to each of the following:

(1) The office having primary production responsibility.

(2) The office having primary quality control responsibility.

(3) The responsible procuring contracting officer.

(4) Contractor's sureties, assignees, or guarantors, if any.

(5) The appropriate finance officer where the contractor has a guaranteed loan, progress payment, or advance payment.

(6) Readjustment activity delegated authority to terminate for default of contractor (see § 1008.2003).

(7) Termination Branch (MCPRTT), Hq AMC.

(d) Upon receipt of the contractor's reply, or if no reply is received at the expiration of the period for contractor's reply to the letter notifying him of the possible default action, the administrative contracting officer will immediately send the following information in writing to the procuring contracting officer with information copies to activities shown in paragraph (c) (6) and (7) of this section.

(1) Contractor's excuses, if any, for his failure to perform, along with a copy of contractor's reply.

(2) Contractor's promised efforts, if any, to cure the delinquency.

(3) Administrative contracting officer's evaluation of the contractor's promises and excuses (if any have been submitted) and an estimate of the time deemed reasonable for the contractor to complete the contract.

(4) The current status of production.

(5) Administrative contracting officer's recommendations as to whether or not the contract should be terminated for default (see § 1008.2006(e)(1)).

(e) It is recognized that despite the most diligent efforts on the part of administrative contracting officers, some contractors will fail or refuse to adhere to contractual obligations. When such failure or refusal is detected it is incumbent upon the administrative contracting officer to recommend affirmative action adequate to remedy the unsatisfactory aspects of the contract being administered. While it is not contemplated that default termination will be recommended for each and every contract as soon as it becomes delinquent as to any substantive provision, nevertheless administrative contracting officers will be responsible for recognizing at an early date the existence of any unsatisfactory conditions that may result in the contractor's failure to meet the contract delivery schedule or deliver supplies in conformance with contract specifications. (See § 1053.102-6(c)(4).) Inasmuch as the Government is usually adjudged to have abandoned or waived the delivery schedule (§ 1008.2002(i)) unless action is taken incident to default termination promptly upon expiration of the delivery schedule, it is of paramount importance that administrative contracting officers, insofar as possible, anticipate contractor failures and be prepared to initiate timely action that properly protects the Government's interest. It is highly desirable to initiate the written "cure" notices (see §§ 1008.2002(f)(2) and 1008.2002(f)(3)) at the earliest point during the contract delivery schedule when it becomes apparent the contract is endangering performance (see § 1008.761(a)(2) for "cure" letter format). While oral admonitions may attain desired results in many instances, such actions are of no avail to the Government if it is subsequently ascertained that the contract should be terminated for default of the contractor and may prejudice the Government's position by indicating acquiescence in the contractor's failure. Therefore, the administrative contracting officer should assure proper and timely written notices to the contractor plus timely recommendation for default termination, as warranted, so as to avoid the aforementioned waiver or abandonment of the delivery schedule and the resultant necessity for establishing a new delivery schedule. Under such circumstances the Government may be unduly delayed in reprocuring necessary or urgent supplies or services from another source if the initial contract must be terminated for default after contractor failure to adhere to the provisions of his reestablished delivery schedule.

(f) *Responsibilities subsequent to request for default investigation.* The administrative contracting officer while continuing his administrative duties in connection with a contract will maintain close liaison with the termination contracting officer (§ 1008.2003) and the pro-

curing contracting officer subsequent to the request for default investigation and will:

(1) Coordinate in advance with the termination contracting officer any contemplated action in connection with the contract under investigation.

(2) Obtain prior approval of the termination contracting officer before allowing production or quality control personnel to visit contractor's facility in connection with contract being investigated or accepting quantities of items thereunder.

NOTE: This provision does not pertain to other contracts with same contractor that are not under investigation, however all Government personnel should refrain from discussing any aspects of contract being investigated unless specifically requested to do so by the termination contracting officer.

(3) Comply with § 1008.2008 when applicable.

(4) *Release unexpended funds under contracts terminated for default.* The contracting officer responsible for the administration of the terminated contract will determine the exact amount of funds unexpended under the contract as of the effective date of default termination. Upon receipt of information from the termination contracting officer that notice of default termination has been released to the contractor, the administrative contracting officer will prepare and issue an appropriate administrative notice to release the unexpended funds. The administrative notice will (i) reference the termination action taken and set forth the exact amount of funds to be released and (ii) will specify that released funds are to be retained for use by the procuring activity in effecting reprocurement of goods or services terminated. (See § 1008.2006 (h).) If the termination action under the Default clause is subsequently reversed by the Armed Services Board of Contract Appeals, or the notice of default termination is converted to a termination for the convenience of the Government, and either of these actions results in a cost settlement with the terminated contractor, funds in the amount necessary to accomplish settlement of the contractor's claim will be reobligated to the terminated contract by the appropriate procuring agency.

3. Section 1008.2006 is deleted and the following substituted therefor:

§ 1008.2006 Responsibility of procuring contracting officer.

Procuring contracting officers are charged with the responsibility of deciding whether or not a contract should be submitted to a termination contracting officer (§ 1008.2003) for investigation incident to default termination. Procuring contracting officers may submit their recommendation for default termination based upon information obtained from an administrative contracting officer, their own initiative, or unified efforts of all Government personnel concerned (Base procurement activities see § 1008.2007).

(a) It is not possible to establish specific and steadfast guidelines as to when the procuring contracting officer should or will request default investigation, inasmuch as each individual contract must be considered on its respective merits. However, the following general guidelines are furnished for application as the procuring contracting officer deems appropriate.

(1) It is not necessary nor always desirable for the procuring contracting officer to endeavor to establish a prima facie case before requesting investigation for default termination.

(2) If the procuring contracting officer is in doubt as to whether or not a request should be made for default investigation, such doubt should always be resolved in favor of requesting the default investigation. Failure of the procuring contracting officer to adhere to this procedure is equivalent to an improper exercise of authority which is specifically reserved to termination contracting officers as set forth in § 1008.2003.

(3) In arriving at his decision for or against requesting default investigation, the procuring contracting officer must give careful consideration to the current status of the contract in question, and what effect a delay in or postponement of action will have upon the rights of the Government. Waiver or abandonment of a delivery schedule (§ 1008.2002(i)) must be avoided. In the event it is decided that extension of the delivery schedule is mandatory as a result of excusable contractor delay or it will be mutually advantageous to the Government and the contractor, such extension should be promptly covered by supplemental agreement to the contract. While the procuring contracting officer must normally obtain consideration for any extension of delivery schedule, as a result of nonexcusable contractor delay, such consideration is not necessarily limited to monetary recoupment and if justified, may be nominal. In any event, the procuring contracting officer is very seldom justified in permitting a contract to become delinquent and remain delinquent without taking affirmative action incident to (i) default termination or (ii) extension of the delivery schedule.

(b) Within 5 days after receiving a recommendation from the administrative contracting officer (§ 1008.2004(a)) that the contractor should be notified by a "show cause" letter (see § 1008.761(c)) of possible default termination, the procuring contracting officer will notify the administrative contracting officer of his concurrence or nonconcurrence. If the procuring contracting officer is unable to make a decision within 5 days, he will notify the administrative contracting officer of the date when a decision may be expected. Under any circumstances, an informational copy of the procuring contracting officer's reply to the administrative contracting officer will be concurrently forwarded to his local readjustment activity and the Commander, AMC, attn: MCPPJT. In turn, the local readjustment activity or MCPPJT, Hq AMC, will monitor developments and furnish advice and guidance as deemed appropriate with the view toward protecting the Government's interest and avoiding "waiver" or "abandonment" situations where default termination appears warranted.

(c) After receiving the administrative contracting officer's report and recommendations following the contractor's reply to the Government's letter informing him of possible default termination (see § 1008.2004 (b), (c) and (d)), the procuring contracting officer will make his decision as to the necessity and advisability of pursuing further default action. In making the decision, the procuring contracting officer will consider among other factors:

(1) The urgency of the requirement and the length of time involved in effecting a substitute procurement from other sources as compared with a realistic reappraisal of what might be accomplished under the contract being considered.

(2) Any changes or variations in the supplies or services under the contract, or other action on the part of the Government which might have contributed to the cause or failure to perform.

(3) The extent of contractor's failure to perform and the effect termination would have on other Government contracts being performed by the contractor.

(4) The possibility of collection of liquidated damages (if provided in the contract).

(5) Whether it appears that the contractor submitted an unrealistic delivery schedule to obtain an advantage over competitors.

(d) If the procuring contracting officer, after careful evaluation of all factors involved, decides not to pursue further action incident to requesting default investigation he will:

(1) Prepare a detailed statement of findings in at least four copies and obtain concurrence with such findings on all copies from the local readjustment and staff judge advocate activities.

NOTE: In the event the local readjustment activity and the staff judge advocate do not concur in the aforementioned findings the procuring contracting officer will hold further action in abeyance and refer the matter to a termination contracting officer for appropriate decision.

(2) Prepare the necessary supplemental agreement extending the delivery schedule if the present schedule is about to expire or has already expired.

(3) If the contractual delivery schedule has not expired and the delinquent contractor has made a satisfactory reply to the administrative contracting officer's "cure" notice (see § 1008.2004(e)), the contractor may be advised substantially as set forth in § 1008.761(b).

(e) The procuring contracting officer upon reaching the decision to request default investigation will immediately prepare and forward AFPI Form 49, "Termination Authority," in four copies to the local readjustment activity. The Termination Authority will recommend investigation for default termination (see § 1008.2010(d)(1)). The procuring contracting officer will concurrently instruct the administrative contracting officer to issue a Show Cause Notice in substantially the form set forth in § 1008.761 (c). (Note: "Stop work" provision to be used only under certain circumstances. See footnote with § 1008.761(c).

Inasmuch as the termination contracting officer (see § 1008.2009) must rely on the information submitted by the procuring contracting officer, and other Government representatives, it is especially important that every effort be made to anticipate and provide the data that will be required to successfully accomplish the investigation. Incomplete or inaccurate information furnished by the procuring contracting officer frequently results in a delayed investigation and unnecessary communication expense:

(1) The procuring contracting officer in addition to AFPI Form 49 will furnish the local readjustment activity with a statement which will include, but is not necessarily limited to, the following facts:

(i) Contractor's name and address, the contract number, the articles or services called for, and contract prices.

(ii) Method of selection of source used at the time of placing the contract and why the contractor was selected.

(iii) Deliveries and payments that have been made under the contract prior to the date of Show Cause Notice, the contract provisions relative to time and place of performance, the facts and surrounding circumstances constituting contractor's failures, and the contracting officer's endeavors to discover and evaluate contractor's excuses, if any.

(iv) Excuses, if any, relied upon and alleged by contractor and the contracting officer's opinion as to veracity, weight, adequacy, and merit of such excuses; current need for the supplies or services called for, and the sources which will be considered to furnish the supplies or services for which present contractor has defaulted with statement of reliability of such source or sources.

(v) Presence or lack of sureties, guarantors, or others secondarily liable, giving their names and addresses.

(vi) Explanatory and confirmatory exhibits such as correspondence, reports, and other related papers will be attached to the statement.

(vii) The exact dates deliveries are due under the contract.

(f) In addition to the requirements of paragraph (e) of this section, the following will be submitted to the local readjustment activity:

(1) Three legible and complete copies of the contract, change orders, and supplemental agreements thereto.

(2) Three copies of all pertinent correspondence.

(3) Three copies of all notices sent to the contractor with proof of service. (To be sent Registered Mail—Return Receipt or "Report Delivery" Telegram.)

NOTE: Normally the aforementioned copies cannot be returned to originator inasmuch as they become a part of permanent records or are used in defending an appeal, if taken by the contractor.

(g) The procuring contracting officer will notify the administrative contracting officer promptly of any action taken in relation to default termination. Thereafter, the procuring contracting officer will assist the termination contracting officer to the maximum extent possible (see § 1008.2010(d)(1)).

(h) Procuring contracting officers will, if requirements still exist, cause new procurements to be initiated within 30 days after receipt of notice from the termination contracting officer that the contract has been terminated for default. Such officers are responsible to see that the activity which initiated the original request also initiates a replacement purchase request for any portion of the terminated contract items still required. Such reprocurement may, however, be effected prior to the issuance of the notice of default termination when the reprocurement meets the criteria for a public exigency contained in § 3.202 of this title. If there is to be a reprocurement, a purchase request will be issued promptly and transmitted to the procuring contracting officer by the organization responsible for requesting the supplies and/or services. Upon receipt of the purchase request, the procuring contracting officer will take prompt action concerning the reprocurement. Unreasonable delay in consummating a reprocurement contract in substitute of a defaulted contract, and/or procurement on the basis of a specification which is materially changed may release a fixed-price contractor from liability for excess costs of reprocurement. Therefore, before reprocurement is made on the basis of a materially changed specification, consideration will be given to determining whether such change and consequent release of the contractor from any excess costs which may result from such reprocurement is in the best interest of the Government. New contracts replacing terminated contracts will be placed according to all applicable procurement directives. Unexpended funds remaining on the terminated contract are normally available to initiate the new procurement. (See § 1008.2004(f)(4).)

(i) If the requirements for the supplies or services under a delinquent contract no longer exist and the contractor is agreeable to the acceptance of a no-cost termination, the procuring contracting officer may enter into a no-cost settlement agreement referred to in §§ 8.712–6 and 8.712–7 of this title if the contracting officer deems such action to be in the best interest of the Government. The procedure as set forth in § 1008.2002(b) (1), (2), (3), and (4) will be followed. As an additional requirement, the "Memorandum for File" will spell out: (1) when it was first ascertained that the supplies or services were no longer required, and if at that time the contract was delinquent as to substantive provisions, and (2) the specific reasons, in detail, why the supplies or services are no longer required. If the contractor is not agreeable to accepting a no-cost termination and the elements of actionable default are present, the procuring contracting officer will send the file, properly prepared according to paragraph (e) of this section, to the local readjustment activity for default investigation.

4. Sections 1008.2007, 1008.2008, 1008.2009, 1008.2010 and 1008.2011 are added as follows:

§ 1008.2007 Contracts administered by contracting officers authorized to act in dual capacity as procuring contracting officers and as administrative contracting officers.

This category includes contracts executed by organizations such as base procurement activities where the contracts are also administered by the contracting officer effecting the procurement rather than referring them to an AMA for administration. Insofar as is applicable to contracting officers in base procurement activities the provisions of §§ 1008.2004 and 1008.2006 will be complied with to the maximum extent possible.

(a) Subsequent to issuing any necessary "cure" notices (see § 1008.2004(e)) and when the facts and circumstances require the initiation of a request for default investigation, the cognizant base procurement contracting officer will issue a "Show Cause" Notice to the contractor in substantially the form set forth in § 1008.761(c). Concurrently with the preparation of the "Show Cause" Notice the base procurement contracting officer will immediately prepare and forward AFPI 49, "Termination Authority," as set forth in paragraph (b) of this section. The Termination Authority without a local docket number thereon will recommend investigation for default termination and will be supported by a signed detailed memorandum, and exhibits thereto, stating the pertinent and relevant reasons, and will incorporate the requirements of § 1008.2006 (e) and (f).

(b) The Termination Authority and supporting data will be forwarded by the base procurement contracting officer as follows:

(1) *Within the United States by.* (i) Base procurement activities within AMC only: Local readjustment office.

(ii) Base procurement or other procurement activity within ARDC only. As directed by Commander, ARDC.

(iii) Base procurement activities of major commands, other than AMC and ARDC. Directly to the headquarters of the AMA in whose geographical area they are located with informational copies, if any, distributed according to instructions from the commanders of the respective major commands.

(2) *Outside the United States.* Termination contracting officers specifically designated to terminate contracts for default of the contractor as set forth in § 1008.2003(b).

§ 1008.2008 Default of facilities lease agreements.

Whenever a lessee has violated any provision of the lease (such as failure to pay rent, failure to preserve and maintain leased property) or any other provision of the Lease Agreement, the administrative contracting officer will serve the lessee with a "Notice to Cure" by Registered Mail—Return Receipt Requested (copy to the AMA or depot headquarters authorized to terminate lease for default). The "Notice to Cure" will grant the lessee a reasonable period of time of not less than 10 days to cure the delinquency. The suggested format for "Notice to Cure" letter, below, may be used.

1. As a result of your failure to _____ as required by Clause _____ of subject Facilities Lease Agreement, the Government is considering terminating subject agreement under the provisions of Clause _____ (default).

2. You are hereby granted _____ days within which to cure your delinquency. Failure to do so may result in default termination without further notice.

3. Your attention is invited to the rights of the Government in event the lease agreement is terminated for default.

§ 1008.2009 Responsibilities of Hq AMC, Hq ARDC, AMA, and depot readjustment activities incident to default.

(a) When a request for default investigation is received from a procuring contracting officer or a base procurement contracting officer, the readjustment activity will ascertain that the initiating contracting officer has complied with all requirements of this Subpart T. In the event additional requirements are to be met in order to assure the completeness and accuracy of the case, endeavor to avoid excessive delay in completing the default investigation. Consistent with good management practices, use the most expeditious means of communication available to avoid long or unreasonable delays in reaching a decision incident to terminating a contract for default of the contractor.

(b) All requests for default investigation submitted by procuring contracting officers or base procurement contracting officers will be forwarded to a termination contracting officer empowered to terminate contracts pursuant to § 1008.2003. This decision (default) is reserved solely to termination contracting officers empowered under the provisions of § 1008.2003 and personnel other than termination contracting officers in Hq AMC, ARDC, AMA, and depot readjustment activities are not empowered to act favorably on requests from procuring contracting officers on terminations for convenience of the Government, including no-cost, when it is clearly evident that actionable default is involved and the provisions of §§ 1008.2002(b) and 1008.2006(i) are not applicable or in the Government's best interest. Under such circumstances, the case will be processed according to this Subpart T and referred to a termination contracting officer for appropriate action.

(c) All termination notices relating to default of the contractor issued by an activity of AMC or ARDC will be identified by a Termination Authority Docket Number.

(1) In AMA terminations the readjustment office at the terminating AMA will be responsible for the assignment of a termination docket number.

(2) In AF depot terminations the individual(s) assigned responsibility for readjustment matters at the terminating depot will be responsible for assignment of a termination docket number.

(3) The first symbol of the default docket number for AMC activities will be according to procedure set forth in § 1008.304 for AMA's and depots. The second symbol will always be "D" for default. A five symbol code will be used. Beginning with the third symbol the numbering of dockets will commence with 001 and will continue uninterrupted from year to year. A new numbering series will not be initiated at any particular time, such as the beginning of the fiscal or calendar year. Identification code numbers are:

AMA's and HQ AMC

1D—MAAMA	6D—SAAMA
2D—MOAMA	7D—WRAMA
3D—OOAMA	8D—Hq AMC
4D—OCAMA	9D—SBAMA
5D—SMAMA	

DEPOTS

CD—Maywood	MD—Memphis
DD—Dayton	RD—Rome
SD—Shelby	TD—Topeka

EXAMPLES: The first default docket number for SBAMA would be 9D001, the second 9D002, the third 9D003, etc. The first default docket number for Rome AF Depot would be RD001, the second RD002, the third RD003, etc.

(4) For ARDC activities the Termination Authority Docket Number will be developed as follows:

(i) First prefix. ARDC (for all ARDC activities).

(ii) Second prefix. Hq ARDC or subordinate ARDC activity issuing default termination notice.

(iii) Follow first prefix and second prefix by the letter "D" for default and begin with a two digit number sequence to commence with 01 at each ARDC activity which will continue uninterrupted from year to year. A new numbering series will not be initiated at any particular time such as the beginning of a fiscal or calendar year.

EXAMPLES: The first default docket number for Hq ARDC would be ARDC–HQ–D01, the second ARDC–HQ–D02, the third ARDC–HQ–D03, etc. The first default number for Cambridge Air Research Center would be ARDC–Cambridge–D01, the second ARDC–Cambridge–D02, the third ARDC–Cambridge–D03, etc.

(d) After a default investigation if it is determined to terminate a contract for the convenience of the Government, the investigation will be closed out under the default docket number (paragraph (c) of this section) and reopened under a convenience docket number according to § 1008.304. The same procedure will apply when the Armed Services Board of Contract Appeals sustains a contractor's appeal from a default termination and as a result thereof the termination is deemed to be for the convenience of the Government.

§ 1008.2010 Responsibility of termination contracting officers authorized to terminate contracts for default.

When a duly designated termination contracting officer is assigned to conduct an investigation as to whether or not there is a basis for default termination, he will proceed to make his determination in the manner set forth as follows:

(a) Expeditiously conduct a thorough review of AFPI Form 49, "Termination Authority," and its attachments, the contract, the facts and circumstances surrounding the contract, all correspondence and related documents, the specific failure of the contractor, the contractor's excuses, if any, for such failures, applicable administrative and contract laws. As deemed appropriate, the termination contracting officer should invite the contractor to discuss the matter orally at a conference and will insure that the contractor is afforded an ample opportunity to set forth his reasons why his contract should not be terminated for default.

(b) Some of the factors, in addition to excusable delay, which should be considered in making such determination are: (1) The availability of the supplies or services from other sources, (2) the period of time required to obtain supplies or services from other sources as compared with the time in which delivery could be obtained from the delinquent contractor, (3) the urgency of the need for the supplies or services, (4) the degree of essentiality of the contractor in the Government procurement program, and (5) the effect of a default termination upon the contractor's capability as a supplier under other contracts. If the records do not reveal sufficient facts to determine whether the contractor's failure is excusable under the terms of the contract, and a "Show Cause" Notice has not been issued, then such notice may be issued by the termination contracting officer. The notice will fix a date for reply, advise the contractor that failure to present an excuse will be considered an admission that none exists, and if appropriate, inform the contractor that, pending receipt of the contractor's reply, the work is to be suspended under the contract. If the default action is predicated upon any failure of the contractor other than failure to make timely delivery, the contractor will be given written notice specifying the failure, and a period of at least 10 days will be granted within which to cure such failure. If the contractor fails to cure such failure within the specified time, or if termination action is predicated upon the contractor's failure to make timely deliveries, the contract may be terminated for default immediately. In those cases involving failure to make timely delivery, the termination notice will normally be dispatched by telegram to the contractor (Written Report of Delivery Requested) with telegraphic information copies to the administrative and procuring contracting officer(s). In all other instances (except where time is of the essence) the termination notice (Registered Mail—Return Receipt) will usually follow a letter format, setting forth the pertinent data, including complete and adequate findings. Supplemental distribution will be according to paragraph (d)(4) of this section.

(c) If it is determined that the facts are insufficient to support an immediate default termination and it is nevertheless desired by the initiator of the AFPI Form 49 to terminate for good and cogent reasons the termination contracting officer may pursue pretermination negotiation action pursuant to paragraph (g)(3), of this section. If pretermination negotiation is not warranted or fails to provide a satisfactory solution, the termination contracting officer will terminate for default of the contractor

or for convenience of the Government, as deemed appropriate, or in the alternative may upon coordination with the procuring contracting officer continue the contract if ascertained to be in the Government's best interest. The initiator of the AFPI Form 49 will be advised of contemplated action by the termination contracting officer.

(d) Authority and responsibility of the termination contracting officer are set forth below:

(1) Assume full cognizance of the contract upon receipt of AFPI Form 49, "Termination Authority." After referral to the readjustment activity the initiator of the AFPI Form 49 will not take independent action on any matters pertaining to the contract under investigation without prior approval or concurrence of the termination contracting officer.

(2) Incident to the default investigation the termination contracting officer, may, by unilateral or bilateral action, reestablish a reasonable and realistic delivery schedule for the contract in question if it is ascertained that the delivery schedule in the contract, or amendments thereto, has probably been waived by the Government. As deemed appropriate by the termination contracting officer, the delivery schedule may be re-established by use of (i) letter, (ii) telegram, or (iii) formal supplemental agreement to the contract. The action will be coordinated in advance between the termination contracting officer and the initiator of the AFPI Form 49, with notification to the administrative contracting officer.

(3) Prior to issuing any default termination to a contractor, the termination contracting officer will coordinate with the local staff judge advocate as to the existence of an actionable default and the advisability of terminating the contract for default. However, the final decision as to the action to be taken and the determination of the facts to be included in the findings must be made by the termination contracting officer according to his independent judgment.

(4) Distribution of notices of default termination and assessment or nonassessment of excess costs (also applicable to Breach of Contract). The termination contracting officer will be responsible for accomplishing distribution of copies of the foregoing notices to the following activities:

(i) Two copies to contractor by certified or registered mail—return receipt requested.

(ii) One copy to buyer.

(iii) One copy to initiator of the procurement.

(iv) One copy to finance office.

(v) One copy to surety and/or assignee.

(vi) One copy to APD, AFPRO, or other office responsible for administration of the contract.

(vii) Contract distribution office. Sufficient copies to service all other distributees under the contract.

(e) If an appeal is taken by the defaulted contractor, the termination contracting officer will comply with § 1054.504 of this chapter.

(f) If after conducting a review as set forth in this section, the termination contracting officer finds and determines that the facts substantiate a default termination (or "breach"), and such action is taken, the termination contracting officer will request the initiator of the AFPI Form 49 to furnish detailed information as to reprocurement of similar supplies or services and the total amount of excess costs, if any, incurred by the Government as a result of the contractor's default (for Breach of Contract see § 1008.2011(c)). Upon receipt of the requested information, the termination contracting officer will prepare findings in which demand will be made upon the defaulted (or "breached") contractor, its sureties and guarantors for payment of the amount of excess costs as computed in the findings, and the contractor will be directed to forward a certified check for such amount (payable to the Treasurer of the United States) to the comptroller, financial division, at the headquarters to which termination contracting officer issuing notice of assessment is assigned (see § 1008.2003). If the information submitted by the initiator of the AFPI Form 49 indicates that there is to be no reprocurement of similar supplies or services or that reprocurement of similar supplies or services was accomplished without the Government's incurring any excess cost, a finding as to nonassessment of excess cost (not applicable to Breach of Contract) will be issued to the contractor by the termination contracting officer.

(g) In lieu of terminating the contract for default, the following courses of action may be taken by the termination contracting officer when such action is determined to be in the best interest of the Government:

(1) Permit the contractor, its surety, or guarantor to continue performance under the contract provided the Government's rights are adequately reserved.

(2) Withhold default action and recommend a formal assignment of the contract to another contractor pursuant to a request from the delinquent contractor and provided the vested rights of the Government are adequately reserved.

(3) Terminate the contract on a convenience basis pursuant to a negotiated pretermination agreement with the contractor. Termination notices issued upon this basis will specifically set forth the limitations upon the respective liabilities of the parties resulting from the termination according to the previously agreed upon conditions. In the event the contract is terminated upon this basis, the termination contracting officer may, if deemed necessary, obtain prior coordination of the initiator of AFPI Form 49 and will prepare a written statement in the termination docket file.

§ 1008.2011 Procedure for handling termination for breach of contract where contractor has failed to perform and contract does not contain a default clause.

(See § 1008.2002(e)).

(a) Where a contractor has failed to perform according to the terms of a contract and the procuring contracting officer is of the opinion that the contract should therefore be terminated, he will forward to the appropriate readjustment activity (see §§ 1008.2006 and 1008.2007 (b)) the same documents and information as are required in connection with contracts containing a Default clause. However, only one copy of the contract and other pertinent documents need be transmitted. In these cases the contracting officer shall not send to the contractor a "Show Cause" and/or "Stop Work Order."

(b) Upon receipt of the necessary documents, the termination contracting officer will review the file to determine whether or not the Government may refuse to accept further deliveries from the contractor and subsequently procure the supplies or services from another source. Should such review indicate that the Government may not presently refuse to accept deliveries, the appropriate procuring activity will be so notified along with recommendations as to necessary future action. However, if the review indicates that the Government is not obligated to accept future deliveries and may purchase the supplies or services from another source, the termination contracting officer will so notify the contractor by telegram (Written Report of Delivery) or registered mail (Return Receipt) in substantially the format shown below:

> You are hereby notified that your failure to perform (Contract or Purchase Order No. ------) in the time required by the terms thereof constitutes a Breach of Contract. The Government will no longer accept delivery thereunder and at its option may procure the undelivered supplies from another source. The Government will hold you liable for any and all damages resulting from your Breach of Contract.

Concurrently with the release of the foregoing Breach of Contract Notice the termination contracting officer will notify the appropriate procuring activity (information copy to Administrative Contracting Officer) of the action taken and a procuring contracting officer assigned thereto may then procure the supplies or services from another source if the requirement still exists.

(c) Upon execution of a reprocurement contract, following receipt of notice from the termination contracting officer that the items may be procured from another source, or in the event it is determined that requirements no longer exist and no reprocurement will be made, the procuring contracting officer will notify the termination contracting officer the exact amount of damages sustained by the Government and, if made, furnish one copy of the reprocurement contract. The termination contracting officer will make demand upon the "breached" contractor for all valid damages according to § 1008.2010(f). Copies of the demand by the termination contracting officer (see § 1008.2010(d)(4)) will be furnished the procuring contracting officer who, in turn, will report the extent to which the Government was damaged by reason of contractor's failure to perform to the appropriate accounting component as cited in the

"breached" contract. This report will set forth the extent of the damage as ascertained by the procuring contracting officer and will include, but need not be limited to, excess costs of reprocurement (where reprocurement has been effected), losses due to discount differentials, and excess transportation costs. In the event the procuring contracting officer determines that the Government was not damaged, this fact should be reported to the termination contracting officer and the aforementioned accounting component with the reasons therefor. Examples of such reasons would be no reprocurement because of no further requirements or reprocurement at less cost to the Government. Two copies of both the original and reprocurement contracts, together with all pertinent correspondence will be transmitted as inclosures to the report. An informational copy of this report less inclosures will be forwarded to the appropriate termination contracting officer.

(Sec. 8012, 70A Stat. 488; 10 U.S.C. 8012. Interpret or apply secs. 2301–2314, 70A Stat. 127–133; 10 U.S.C. 2301–2314)

PART 1010—BONDS AND INSURANCE

Subpart A—Contract Bonds

1. The title of Subpart A is changed from "Bonds" to "Contract Bonds."

§§ 1010.101–52—1010.101–55 [Deletion]

2. Sections 1010.101–52 through 1010.101–55 are deleted.

3. Sections 1010.101–52 and 1010.101–53 are added as follows:

§ 1010.101–52 Penal sum or amount.

Penal sum or amount means the dollar amount shown in a bond and represents the maximum payment for which the surety is obligated.

§ 1010.101–53 Consent of surety.

A consent of surety is an acknowledgement by a surety that its bond given in connection with a contract continues to apply to the contract as modified or amended.

4. Section 1010.102 is deleted and the following substituted therefor:

§ 1010.102 Bid bonds.

5. Sections 1010.102–50 and 1010.102–51 are added as follows:

§ 1010.102–50 Bid bonds for supply contracts.

(a) If a bid bond is required on a supply contract the penal sum should be not less than the amount of the required performance or payment bond. Standard Form 24, "Bid Bond," will be used.

(b) If an annual bid bond is furnished by a contractor it will be prepared on Standard Form 34, "Annual Bid Bond," and submitted in duplicate to the Commander, AMC, attn: MCJCR, for review and filing of the original with the General Accounting Office. When approved, such annual bid bond may be used throughout the Air Force. If a contractor indicates in his bid that he has an annual bid bond on file, verification may be obtained from the Commander, AMC, attn: MCJCR.

§ 1010.102–51 Bid bonds for construction contracts.

Only individual bid bonds (Standard Form 24) will be used for construction contracts. Whenever a bid bond is required, the penal amount therein should be not less than the penal amount of the required payment bond. Annual bid bonds will not be used in connection with construction contracts.

6. Sections 1010.103–1, 1010.103–2 and 1010.103–3 are revised as follows:

§ 1010.103–1 Performance bonds in connection with other than construction contracts.

Generally, performance bonds will not be required for contracts other than those involving construction. A procuring contracting officer may, however, require such a bond in special circumstances involved in a particular contract for supplies or services. Justification for the requirement must be fully documented by the contracting officer. In no case will a performance bond be required unless prior approval has been obtained from the Chief or Deputy Chief of the respective buying divisions at Hq AMC, AMC field procurement activities, and Hq ARDC and ARDC centers with respect to procurements made at those activities, and by the chief or deputy chief of the purchasing office with respect to procurements made at other than the above activities. Where such bonds are authorized, the penal sum will usually be no less than 20 percent and only rarely will it exceed 40 percent of the total amount of the contract.

§ 1010.103–2 Performance bonds in connection with contracts involving construction.

(a) The penal amount of a performance bond should normally be not less than the penal amount for payment bonds indicated in § 10.104–2 of this title.

(b) The Secretary has waived the requirement of performance and payment bonds with respect to all cost-reimbursement type contracts involving construction. However, in unusual circumstances, such bonds may be required if the requirement is authorized in advance by the Commander, AMC. This authority has been delegated by the Commander, AMC to:

(1) Director and Deputy Director of Procurement and Production, Hq AMC.

(2) Deputy Director/Procurement and Assistant Deputy Director/Procurement, Hq AMC.

(3) Chief and Deputy Chief, Industrial Resources Division, Hq AMC.

Any request for such authorization will be submitted to the Commander, AMC, attn: MCPB, with a statement of the facts justifying the requirement of performance bonds.

(c) Performance and payment bonds are not required on a construction contract not exceeding $2,000. However, if the amount of such contract is increased beyond $2,000, a performance bond and a payment bond will be required and will be based upon the total contract price, which means the original price plus the increases thereto.

§ 1010.103–3 Annual performance bonds.

(a) All annual performance bonds must be submitted to the Commander, AMC, attn: MCJCR, in duplicate for review and approval and filing of the original with the General Acounting Office. Such bonds will be written on Standard Form 35 (Annual Performance Bond).

(b) An annual performance bond will be used only with the prior approval of the Procurement Law Division (MCJC), Hq AMC. The total individual obligations under an annual performance bond must not exceed the penal amount of such bond.

7. Section 1010.103–50 is added as follows:

§ 1010.103–50 Additional performance bonds.

(a) If a contract not involving construction, for which a performance bond has been required, is increased in price to cover new or additional work, the contracting officer will determine whether an additional performance bond to cover the added work will be required. The policy stated in § 1010.103–1 will govern in making such determinations. In lieu of an additional performance bond, if required, a consent of surety in the form set forth in § 1010.203(a) of this part may be furnished.

(b) Where a performance bond has been required in support of a contract involving construction and there is executed (1) a change or changes authorized by the basic contract which collectively effect an increase in price in an amount greater than the original contract price or $25,000, whichever sum is lesser, or (2) an amendment not authorized by the basic contract involving any increase in the contract price, an additional performance bond to cover such increase or a consent of surety by which the surety recognizes its increased liability will be required. (See § 1010.203 (a)). The penal amount of any additional bond required hereunder will be in the same proportion to the increase in contract price as the penal sum of the original bond bears to the contract price of the original contract. The penalty of the payment bond will not be increased beyond $2,500,000.

8. Sections 1010.104–1 and 1010.104–2 are revised as follows:

§ 1010.104–1 Payment bonds in connection with contracts other than construction contracts.

Such bonds are not authorized unless prior approval has been secured from Pricing Staff Division (MCPPB), Hq AMC.

§ 1010.104–2 Payment bonds in connection with contracts involving construction.

See § 1010.103–2(b) regarding waiver of payment bonds for cost-reimbursement type contracts involving construction. See § 1010.103–2(c) for requirement for payment bonds for contracts initially less than $2,000 which are increased over that amount.

9. Section 1010.104–50 is added as follows:

§ 1010.104–50 Additional payment bonds.

The policy stated in §1010.103–50 for performance bonds will apply.

10. Sections 1010.105 and 1010.106 are revised as follows:

§ 1010.105 Advance payment bonds.

Generally the security provisions of an advance payment agreement should make it unnecessary to require a bond to protect the interests of the Government. Where the contracting officer considers that such a bond should be required, he will submit his recommendation and the supporting facts to Financial Branch (MCPZF), Hq AMC, for transmission with appropriate recommendation to Hq USAF, AFMPP–PR–2, for prior approval of the Secretary of the Air Force.

§ 1010.106 Patent infringement bonds.

Even where authorized under § 10.106 of this title, a patent infringement bond will not be required unless approved by the Review Branch (MCJCR), Hq AMC.

§ 1010.107 [Deletion]

11. Section 1010.107 is deleted.

12. Section 1010.108 is deleted and the following substituted therefor:

§ 1010.108 Execution and administration of bonds.

13. Sections 1010.108–50, 1010.108–51, 1010.108–52, 1010.108–53 and 1010.108–54 are added as follows:

§ 1010.108–50 Execution.

All bonds will be executed in duplicate.

§ 1010.108–51 Administration of bonds.

–All performance and payment bonds (except annual bonds, see §§ 1010.102–50 (b) and 1010.103–3 of this chapter) and all consents of surety will be reviewed by the contracting officer using AFPI Form 11. When doubt of legal sufficiency exists, the advice of the staff judge advocate serving the facility should be obtained. The contract file of numbered contracts retained by the contracting officer will include a copy of all bonds and consents of surety applicable thereto.

§ 1010.108–52 Distribution of bonded contracts.

See § 1053.603(d) of this chapter.

§ 1010.108–53 Bond forms.

Standard bond forms are described in § 16.805 of this title, and will be used according to the instructions therein.

§ 1010.108–54 Authority to substitute surety bonds.

The Commander, AMC, is authorized to act for the Secretary in accepting a new surety bond in substitution for a bond previously approved covering part or all of the same obligation, and in authorizing the notification of the principal and surety on the bond originally furnished that it will not be considered as security for any default occurring subsequent to the date of approval of the new bond. The Commander, AMC, is authorized to delegate this function with power of redelegation. Requests for approval will be referred to the Commander, AMC, attn: MCJCR, for appropriate action.

Subpart B—Sureties of Bonds

1. The title of Subpart B is corrected to read: "Sureties of Bonds."

2. Section 1010.201 is deleted and the following substituted therefor:

§ 1010.201 General requirements of sureties.

3. Sections 1010.201–50, 1010.201–51, 1010.201–52, 1010.201–53 and 1010.201–54 are added as follows:

§ 1010.201–50 Corporate sureties.

Acceptability. A list of the sureties approved by the Secretary of the Treasury is published annually by the Treasury Department (TD Form 356). This list indicates the maximum penal sum for which any corporate surety may underwrite any one obligation. Each major command will consolidate its requirements for TD Form 356 and submit them to the AF Publications Distribution Center, Washington 25, D.C., on or before April 1 of each year and that office will make distribution of TD Form 356 to the commands submitting requirements. Only sureties appearing on the Treasury List and not in excess of the underwriting limits stated therein, will be accepted in the United States, its Territories and Possessions. Foreign procurement activities may use sureties not appearing on TD Form 356 when determined by the contracting officer to be in the best interest of the Government.

§ 1010.201–51 Corporate cosureties.

More than one corporate surety may be accepted as surety in connection with either supply or construction contracts, provided, that in no case will the liability of any such cosurety exceed the maximum penal sum in which it is qualified to underwrite any one obligation. It is not necessary that corporate cosureties obligate themselves for the full amount of the bond. Each corporate surety may limit its liability in the bond to a specified sum. When the bond is to be executed by two or more corporate sureties, Standard Form 27, "Performance Bond—Corporate Co-Surety Form," will be used in the case of a performance bond and Standard Form 27A, "Payment Bond—Corporate Co-Surety Form," will be used in the case of a payment bond.

§ 1010.201–52 Individual sureties.

Individual sureties are acceptable as sureties for all types of bonds except annual bid bonds provided, the prior written coordination of the staff judge advocate of the procuring activity is secured.

§ 1010.201–53 Partnerships and unincorporated associations.

These organizations will not be accepted as sureties unless the prior written coordination of the staff judge advocate of the procuring activity is secured.

§ 1010.201–54 Substitution or replacement of surety.

See § 1010.108–54.

4. Section 1010.203 is deleted and the following substituted therefor:

§ 1010.203 Consent of surety.

The following forms of consent of surety are authorized for use:

(a) Consent of surety to a modification providing for an increase in the penal sums of bonds previously given.

CONSENT OF SURETY

Date _____
Supplemental Agreement No. _____ Contract No. _____ Change Order No. _____

Consent of Surety is hereby given to the foregoing contract modification, and the surety agrees that its bond or bonds shall apply and extend to the contract as modified or amended thereby. The principal and surety further agree that on and after the execution of this consent, the penalty of the aforementioned performance bond or bonds is hereby increased by _____ dollars,[1] and the penalty of the aforementioned payment bond or bonds is hereby increased by _____[1]

[SEAL]

_____
(Individual principal) [2]

_____ _____
(Address) (Business address)

_____
(Corporate principal) [2]

_____
(Business address)

Attest:

_____ By _____
(Affix corporate seal)

_____
_____
(Corporate surety)

_____
(Business address)

_____ By _____
(Affix corporate seal)

_____

[1] The penal amounts shall be increased as determined by the contracting officer. See §§ 1010.103–50 and 1010.104–50. The penalty of the payment bond shall not be increased beyond two million five hundred thousand dollars.

[2] This consent shall be executed concurrently with the execution of the contract modification by the same person who executed the modification.

(b) Consent of surety where the penal sums of bonds previously given are not increased.

CONSENT OF SURETY

Date _____
Supplemental Agreement No. _____
Contract No. _____
Change Order No. _____

Consent of Surety is hereby given to the foregoing contract modification, and the surety agrees that its bond or bonds shall apply and extend to the contract as modified or amended thereby.

Attest:

_____ _____
(Corporate surety)

_____
(Business address)

By _____
(Affix corporate seal)

Subpart C—Insurance—General

A new Subpart C is added as follows:

Sec.
1010.301 General.
1010.303 Responsibility for loss of or damage to Government property.
1010.305 Procedures to be followed in the event of loss of or damage to Government property.
1010.305–50 Unusually hazardous risks.

§§ 1010.301 to 1010.305–50 issued under sec. 8012, 70A Stat. 488; 10 U.S.C. 8012. Interpret or apply secs. 2301–2314, 70A Stat. 127–133; 10 U.S.C. 2301–2314.

§ 1010.301 General.

Requests for guidance or technical assistance on insurance matters not specifically covered by this subpart should be directed to Commander, AMC, attn: MCPPB.

§ 1010.303 Responsibility for loss of or damage to Government property.

For additional clauses covering these responsibilities see § 1007.3103–6 of this chapter (Government Furnished Property, Construction Contracts) and § 1007.2703–2 of this chapter (Liability for Government Owned Property, Facilities Contracts).

§ 1010.305 Procedures to be followed in the event of loss of or damage to Government property.

See § 10.305 of this title.

§ 1010.305–50 Unusually hazardous risks.

Where contract performance involves unusually hazardous risk making customary insurance protection either unobtainable or unreasonable in cost, the Government may elect to indemnify the contractor against loss or other damage to property of the contractor and liabilities to third persons to the extent that statutory authority exists for such indemnification. Such indemnity provisions will not be included in contracts unless specifically authorized in advance by the Secretary of the Air Force or his designee. Requests for information, or authorization to use such indemnity provisions, will be directed to Commander, AMC, attn: MCPPB, for further processing to Hq USAF after coordination with the office of the Procurement Committee (MCPC), Hq AMC, and Staff Judge Advocate (MCJ), Hq AMC.

Subpart D—Insurance Under Fixed-Price Contracts

Subpart D is deleted.

Subpart E—Insurance Under Cost-Reimbursement Type Contracts

1. Section 1010.501 is deleted and the following substituted therefor:

§ 1010.501 Policy.

The allowance of a contractor's insurance costs will be determined by the administrative contracting officer according to Part 15 of this title, "Contract Cost Principles."

2. Section 1010.501–1 is added as follows:

§ 1010.501–1 Workmen's compensation and employers' liability insurance.

(a) Workmen's compensation is an obligation imposed upon an employer by the workmen's compensation law of a State or Territory of the United States or by the United States Longshoremen's and Harbor Workers' Compensation Act, to pay such benefits as are prescribed by the law.

(b) An employer subject to a workmen's compensation law can provide for his obligation by insuring either with a commercial insurance company or a State fund, or by self-insuring. In a few States, commercial insurance is not permitted and the State fund is the exclusive carrier. If the employer desires to self-insure, he must qualify himself as a self-insurer with the appropriate State authority. However, such approval is not the sole consideration in the Air Force's approval of a self-insurance plan. The Air Force may require information as to the procedures followed in operating the self-insurance plan and the means employed to accrue the operating costs thereof, as a condition to granting Air Force approval of the self-insurance plan.

(c) Related to workmen's compensation, and included in the same insurance policy when insured, are: (1) Employers' liability, (2) workmen's compensation for occupational disease, and (3) employers' liability for occupational disease. Employers' liability is the liability imposed upon the employer (contractor) by law for damages on account of personal injuries, including death at any time resulting therefrom, sustained by his employees by reason of accidents.

(d) The insurance coverage with respect to employers' liability and occupational disease will be required in connection with cost-reimbursement type contracts, with a minimum limit of $100,000 per incident.

3. Sections 1010.501–2, 1010.501–3, 1010.501–4, 1010.501–50, and 1010.501–51 are deleted and the following substituted therefor:

§ 1010.501–2 General liability insurance.

(a) Liability insurance, commonly referred to as third-party insurance, protects the insured against his liability to members of the public for bodily injury or death or for damage to or destruction of the property of others. An insurance policy may be obtained to insure the several general liability hazards separately or in various combinations. The advantage of a comprehensive general liability policy is that the insurance afforded protects the insured from loss arising from any cause other than those causes specifically excluded. This contrasts with the ordinary policy, which names the hazards insured against. In this manner the danger of "uninsured gaps" in the insured's insurance program is minimized.

(b) Comprehensive general (bodily injury) liability insurance will be required with minimum limits of $50,000 per person, $100,000 per accident. The Government will normally assume the risk of the contractor's uninsured third party liabilities to the extent provided by the Insurance-Liability to Third Persons clause prescribed by § 7.203–22 of this title.

§ 1010.501–3 Automobile liability insurance.

(a) A contractor using automobiles or other vehicles away from his premises in connection with contract operations has need for automobile insurance. Such insurance serves to protect the contractor for its legal liability to members of the public because of bodily injury and property damage arising out of the operations, maintenance, or use of the insured vehicles, and to protect it from financial loss resulting from damage to and loss of or destruction of the insured vehicles.

(b) An insurance policy for automobiles can be written to apply to specific vehicles, classes of vehicles, or to all vehicles in which the insured may have an insurable interest. The comprehensive automobile liability policy is generally chosen by a contractor, since it can minimize the possibility of an uninsured loss. A comprehensive automobile liability insurance policy may or may not include coverage (comprehensive physical damage and collision) for damage to and loss or destruction of insured vehicles.

(c) Automobile bodily injury liability and property damage liability insurance will be required with minimum limits of $50,000 per person and $100,000 per accident for bodily injury liability and $5,000 for property damage liability on the comprehensive policy form covering all owned, nonowned, hired, and Government-furnished motor vehicles which will be used in the contract operations where use will not be limited exclusively to the premises on which the work under such contract is performed. The Government will normally assume the risk of the contractor's uninsured third party liabilities to the extent provided by the Insurance-Liability To Third Persons clause prescribed by § 7.203–22 of this title.

§ 1010.501–4 Aircraft public and passenger liability insurance.

(a) The more common forms of aviation insurance are:

(1) *Aircraft liability.* This type of insurance covers the liability imposed by law upon the insured aircraft owner and operator. The basic coverages are bodily injury liability, property damage liability, and passenger liability.

(2) *Airport liability.* This type of insurance covers the legal liability of the insured arising out of the usual hazards of premises, elevators, alterations, products, and contractual liability. The coverage is similar to that of comprehensive general liability insurance.

(3) *Hangar keeper's liability.* This type of insurance protects the insured against legal liability claims for loss of or damage to aircraft in the insured's care or custody; this insurance is written on an aircraft hull policy.

(4) *Aircraft hull insurance.* This type of insurance covers the insured for damage to or loss of the insured aircraft

when loss or damage results from an insured peril.

(b) Where aircrafts are used in connection with the performance of the contract, aircraft liability insurance will be carried by the contractor, providing bodily injury coverage including passenger liability, if the exposure exists, and property damage coverage. The minimum limits of liability will be $50,000 per person and $100,000 per accident for bodily injury, and $50,000 per accident for property damage. The Government will normally assume the risk of the contractor's uninsured third party liabilities to the extent provided by the Insurance-Liability to Third Persons clause prescribed by § 7.203–22 of this title.

(c) Airport liability insurance: If the operation of an airport is necessary for or incident to performance of a contract, such insurance will be carried by the contractor for bodily injury at minimum limits of $50,000 per person and $100,000 per accident. Property damage coverage will not be carried. The Government will normally assume the risk of the contractor's uninsured third party liabilities to the extent provided by the Insurance-Liability to Third Persons clause prescribed by § 7.203–22 of this title.

(d) Hangar Keeper's Liability Insurance is a form of insurance which usually is not necessary in performance of a cost type contract. The Government will normally assume the risk of the contractor's uninsured hangar keeper's liability to the extent provided by the Government property clause prescribed by § 13.503 of this title.

(e) Aircraft hull insurance will not be purchased at Government expense to cover aircraft manufactured, modified, or serviced under a Government cost type contract against risks which are assumed by the Government under the Government property or other clauses in the contract. Such insurance is appropriate, however, for aircraft not owned by the Government and used in connection with operations under a cost type contract.

§ 1010.501–50 Group insurance.

(a) *General.* (1) Group insurance plans provide various types of benefits for employees and their dependents. Usually, these benefits are provided under one or more group insurance policies with life or casualty insurance companies. Also, these benefits may be provided through individual insurance policies or through hospital association plans.

(2) The benefits and the costs for benefits under these group insurance plans vary for different contractors. Since hospital benefits for non-occupational sickness or accidents are generally designed to provide semi-private accommodations for employees while hospitalized, the hospital daily benefit will vary according to the charge for such accommodations in each geographical locality of the operations of the contractor. Other considerations influence the amount of this and other group insurance benefits, for example, union negotiations, amount of other fringe benefits, wage levels, benefits available under applicable workmen's compensation laws, costs of the group insurance benefits, and effects of such costs in competitive prices.

(3) Group insurance plans are either contributory, where the employees and the contractor jointly pay the costs of the benefits, or noncontributory, where the total costs of the benefits are paid by the contractor. Usually employees are eligible for most group insurance benefits after 1 to 3 months of service.

(4) Some group insurance plans provide for hospital and surgical benefits for the dependents of employees. The entire cost of dependents' benefits is sometimes borne by the employees.

(b) *Responsibility of the administrative contracting officer.* The administrative contracting officer will determine whether the group insurance benefits are reasonable in amounts and necessary in connection with the performance of AF contracts. This determination will be made only after considering the wages and other fringe benefits to which the employees of a contractor are entitled. Consideration must be given to the general level of total wages and benefits for employees in similar jobs in the immediate geographical vicinity. If the contractor is engaged principally in commercial operations, there is little likelihood that the group insurance benefits will be unreasonable because of competitive reasons. However, where a contractor is primarily working on Government contracts, the restraints imposed by competition may be lacking and a careful review by the administrative contracting officer may be indicated.

§ 1010.501–51 Use and occupancy insurance.

(a) Use and Occupancy or Business Interruption Insurance is a form of insurance which indemnifies the contractor for certain losses incurred during a period of interruption or suspension of business operations resulting from physical damage to property essential to the conduct of business. The contractor is indemnified for loss on account of fixed charges and other expenses which accrue during such period and for loss of net profit which the contractor is prevented from earning. The amount of indemnity purchased under this form of insurance is based on the probable loss the contractor would sustain during the period of interruption or suspension of business operations. The premium charge is based on the aggregate indemnity under the policy.

(b) (1) When costs in connection with Use and Occupancy Insurance are presented for allowance, the aggregate indemnity available will be analyzed. Only that percentage of total insurance cost which is identifiable with indemnity benefits determined to be acceptable within the intent of subparagraph (2) of this paragraph will be allowed.

(2) Costs of insuring those items of fixed charges and other expenses, which are allowable items of costs in AF contracts, will be considered allowable. Such fixed charges and other expenses include, but are not limited to, salaries of employees under contract and other key employees, rents, most insurance premiums, and charges for non-cancellable contracts for light, heat, or power.

(3) Costs of insuring the net profit a contractor is prevented from earning during a period of business interruption or suspension are unallowable. Similarly, the costs of insuring certain items of fixed charges such as interest, Federal income taxes, donations, and certain advertising expenses are unallowable.

§§ 1010.501–54, 1010.501–55 and 1010.503 [Deletion]

4. Sections 1010.501–54, 1010.501–55 and 1010.503 are deleted.

5. A Subpart F is added as follows:

Subpart F—Insurance of Industrial Facilities Under Leases or Facilities Contracts

§ 1010.602 Responsibility for loss or damage to facilities.

The notice required to be given pursuant to § 10.602–2(a)(3) of this title will be directed to: Commander, AMC Aeronautical Systems Center, attn: LMBI or Commander, AMC Ballistic Missiles Center, for leases issued by such centers, or the issuing air materiel area for leases issued by the AMA's. Upon receipt of such notice and ascertainment of relevant facts pertaining to probable future use of the facilities, the centers or the AMA will make the determination whether it is in the best interests of the Government that the risk of loss or damage to the facilities be thereafter assumed by the Government or that the lessee be required to assume the risk of such loss or damage and maintain appropriate insurance coverage of the facilities. If such determination effects a modification of the relative responsibilities of lessee and Government, the centers or the AMA will likewise be responsible to initiate required contractual changes in the lease agreement consistent with § 10.602–2(b) of this title.

6. A Subpart G is added as follows:

Subpart G—Special Casualty Insurance Rating Plans

§ 1010.703 Use and eligibility for plans.

Rating plans may not be applied to AF defense projects without prior approval of Hq AMC. Requests for determination of eligibility will be addressed to Commander, AMC, attn: MCPF.

(Sec. 8012, 70A Stat. 488; 10 U.S.C. 8012. Interpret or apply secs. 2301–2314, 70A Stat. 127–133; 10 U.S.C. 2301–2314)

PART 1011—FEDERAL, STATE AND LOCAL TAXES

Subpart B—Exemptions From Federal Excise Taxes

1. In § 1011.205, paragraph (b) (1) (ii), (iii) and (3) is revised, and a Note is added following (b) (4) as follows:

§ 1011.205 Other exemptions.

* * * * *

(b) (1) * * *

(ii) Director and deputy directors of procurement and production, Hq AMC.

(iii) Director of Procurement and Production, Middletown Air Materiel Area.

* * * * *

(3) All procuring contracting officers except those located at Hq AMC, will submit applications and letters of transmittal to Commander, Middletown AMA, for signature by the Director of Procurement and Production and for forwarding to the Treasury Department. Hq AMC activities will submit applications and letters of transmittal to a deputy director of the Directorate of Procurement and Production, Hq AMC, for signature.

(4) * * *

NOTE: TD Form 1444 (Sep 51) and TD Form 1486 (Sep 54) have been replaced by revised (April 1959) forms: TD Form 1444, "Tax-Free Spirits for Use of United States," and TD Form 1486, "Specially Denatured Spirits for Use of United States." Using activities must submit new applications, using the revised forms, to replace existing permits on TD Form 1444 for taxfree alcohol or on TD Form 1486 for specially denatured alcohol prior to July 1, 1959. Use of existing permits after July 1, 1959 is authorized, provided new applications have been submitted according to subparagraph (3) of this paragraph, to arrive at the Treasury Department by July 1, 1959. The revised forms must also be used for any new requirements.

Subpart C—State and Local Taxes

1. Section 1011.351–3 is revised as follows:

§ 1011.351–3 General.

No requirement now exists requiring contractors to pay under protest Indiana Gross Income taxes where the State imposes such tax upon receipts from deliveries by contractors to the Government on Government bills of lading where inspection and acceptance takes place in contractor's plant in Indiana. Such taxes are valid and therefore may be included in price where the contract contains the tax clause in §§ 11.401–1 or 11.401–2 of this title, or reimbursed under cost-type contracts.

2. Section 1011.351–4 is revised as follows:

§ 1011.351–4 Procedures.

(a) No clause should be included in Government contracts requiring contractors to pay under protest Indiana Gross Income taxes either under fixed-price contracts or cost-reimbursement contracts. Existing contracts containing such clauses need not be modified to delete such clause, but contractors should not be required, in making payment of such taxes, to make payment under protest in accordance with the provisions of the clause.

(b) The foregoing will not be interpreted as to require the contractor to pay Indiana Gross Income taxes where such taxes are not applicable. The State of Indiana does not impose the tax on deliveries without the State where acceptance takes place at destination, e.g., shipments on commercial bills of lading with inspection and acceptance at destination.

(Sec. 8012, 70A Stat. 488; 10 U.S.C. 8012. Interpret or apply secs. 2301–2314, 70A Stat. 127–133; 10 U.S.C. 2301–2314)

PART 1012—LABOR

Subpart A—Basic Labor Policies

1. Section 1012.102–5 is added as follows:

§ 1012.102–5 Exceptions.

See § 12.102–5 of this title.

(a) To preclude possible problems as to the allowance of overtime and shift premium costs incurred by the contractor for work performed under § 12.102–5 of this title, "Exceptions", the AFPR or chief of the APD will maintain surveillance of the contractors' overtime extra-pay and multi-shift operations.

§ 1012.102–50 [Deletion]

2. Section 1012.102–50 is deleted.

SUBPART D—LABOR STANDARDS IN CONSTRUCTION CONTRACTS

1. Section 1012.404–2 is deleted and the following is substituted therefor:

§ 1012.404–2 Wage determinations.

(a) The wage determination, issued by the Department of Labor pursuant to the Davis-Bacon Act, is a schedule of the minimum hourly rates of wages to be paid laborers and mechanics employed by the contractor and his subcontractors performing work called for by the contract. It normally includes all the classifications of laborers and mechanics expected to be employed on the work. There are three types of determinations: area determinations, limited area determinations, and individual determinations.

(1) Area (54A) determinations provide wage rates for all contracts which may be awarded for work at an installation or within a given geographical area (usually a county) during the 90-day life of the determination. This type of determination contains all the classifications of laborers and mechanics usually needed for construction work and is issued only for installations where continuing construction activity is anticipated. Area determinations must be renewed on a continuous basis by submission of Department of Labor Form DB–11 to the Department of Labor approximately 30 days prior to the expiration of each current area determination.

(2) Limited area (54A) determinations: In some states, the Department of Labor does not include in the area type determination wage rates applicable to heavy or highway construction. In these states, the wage rates issued are for all classifications for "Building Construction" only. This type of determination is known as a limited area determination, and in the cases where the Department of Labor issues this type of determination, the requesting office must submit requests for heavy and highway construction projects as described in subparagraph (3) of this paragraph. The Department of Labor will disseminate to field activities a list of those states which do not include "heavy" or "highway" construction classifications in area type determinations.

(3) Individual determinations are determinations which are provided by the Department of Labor for a single contract. Such a determination must be obtained for each contract subject to the Davis-Bacon Act unless an area (54A) determination is applicable. The classifications of laborers and mechanics in these determinations are limited to those classes employed in the type of work required by the contract, as indicated in the request.

(b) *Processing requests.* (1) Requests for area (54A) determinations, limited area (54A) determinations, and individual determinations will be submitted directly to Davis-Bacon Section, Department of Labor, Washington 25, D.C. The wage determinations will be transmitted by the Department of Labor direct to the requesting office. This provision does not apply to requests for wage determinations to be used for family housing projects to be constructed under Title VIII of the National Housing Act. All such requests and inquiries pertaining thereto will be made directly to the Chief, Family Housing Division, Directorate of Installations, Hq USAF.

(2) Requests will be initiated by the air installations officer where he is responsible for preparing construction specifications or by the contracting officer administering the contract in cases of subcontracts and facilities contracts.

(3) Requests for determinations will be made on Department of Labor Form DB–11. No requests by wire or telephone will be made by field personnel to the Department of Labor.

(4) The Department of Labor requires a minimum of 15 days for processing a request. The requesting office should allow additionally for sufficient transmittal time in forwarding the request and receiving the wage determination.

(5) If problems regarding wage rates arise after requests have been submitted to or after determinations have been received from the Department of Labor, followup inquiries or other communications relating thereto will be sent to Hq USAF, attn: AFMPP–PR except as provided in § 1012.404–3. This establishes the liaison between the Air Force and the Department of Labor.

(c) *Use of wage rate determinations.* (1) The specifications of every contract subject to the Davis-Bacon Act will include a copy of a current wage rate determination. Contracting officers will not accept purchase requests covering projects subject to the Act until the required determination has been incorporated in the specifications. Contracts may be advertised up to the expiration date of the determination; however, bids will not be opened after expiration until a new determination has been received and all bidders have been advised of the new determination and given a reasonable opportunity to resubmit their bids on the basis of the contract specifications as revised by the new determination.

(2) Wage rates properly included in the contract at the time of award are applicable to the contract for its duration, except as specified in subdivision

(b) of this subparagraph. These same rates may be used for additional or new work not included in the specifications if an area determination was used in the IFB or RFP and that determination is still in effect at the time of change. If the area determination has expired or if an individual determination was used, a new wage determination must be used for such new or additional work unless it is clear that the new or additional work is so much a part of the work originally contracted for that it is reasonably impossible of performance by other than the original contractor. (An apparent probability that the new work may be done more conveniently or even at less expense by the original contractor does not in itself justify use of the original determination for such work; the original determination should be used for the new work only if the new work (i) does not reflect a change or modification which materially alters the scope or character of the original contract requirements and (ii) is so closely related to the original work both in nature and in timing that it cannot reasonably be regarded as a separate and distinct undertaking.)

(a) *Fixed-price contracts (formally advertised or negotiated).* Once a contract is awarded, the wage rates contained in the specifications are the minimum rates that can be paid by the contractor or his subcontractors during the life of the contract.

(b) *Cost-reimbursement type, time and material, and labor-hour contracts and subcontracts.* The wage rates established for and included in cost-reimbursement type prime or subcontracts (including time and materials contracts and labor-hour contracts) according to the Davis-Bacon Act are the minimum rates that can be paid during the life of the contract. Reimbursement to contractors and subcontractors holding the foregoing types of contracts for wages paid to laborers and mechanics are based on this wage schedule; all applications of prime and subcontractors to use higher wage rates require specific approval by the contracting officer. The contracting officer's approval will be based upon substantiating data in support of the contractor's request, such as: Proposed wage rates were established as a result of bona fide collective bargaining in which the contractor participated or to which he adheres as a general practice or as a result of membership in contractors' organizations; proposed wage rates have approval of any existing wage stabilizing body established pursuant to Federal law; or payment of wages at higher rates is required to man the job. Subcontracts awarded pursuant to a cost-reimbursement type, time and material, or labor-hour contract will include wage rates prevailing at the time of the subcontract award, except where the subcontracted work is included in the specifications of the prime contract and is a part of the particular work for which the wage rate determination attached to the prime contract was obtained.

(d) *Modification and superseding determinations.* During the 90-day life of a determination, the Department of Labor may issue a modification thereto, changing the wage rate for one or more classifications or adding or deleting a classification; or the Department of Labor may issue a new determination which entirely supersedes the original determination for the duration of the 90-day period. Neither modifications nor superseding determinations change the expiration date of the original determination. The date that modifications, superseding determinations, or new determinations are received in the Air Force from the Department of Labor will be the date used in determining whether the rates therein are effective. Therefore, all copies of modifications and determinations will be time-date stamped to show when they were first received by the Air Force.

(1) If the date stamped is 5 days or more before bid opening, the new rates are effective and must be included in the contract. Accordingly, bidders should be advised of the new rates by an amendment to the Invitation for Bids.

(2) If an effective modification or determination is not received by the pertinent procuring activity until after the opening of bids, the modification or determination will be given effect as follows:

(i) If there are no changes to applicable wage rates, or if there are increases which the low responsible bidder will accept without change in its bid price, award will be made to the low responsible bidder, provided that written acceptance of the new rates is obtained from the low responsible bidder and attached to the bid and that the new rates are included in the contract.

(ii) If any applicable wage rate is decreased, or if there is any increase which the low responsible bidder will not accept without change in its bid price, award will not be made until the procurement has been readvertised using the new or modified determination.

(e) *Posting.* (1) The contracting officer will require the contractor to display the Wage Rate Information Poster (SOL–155), together with the applicable wage determination.

(2) The contracting officer will insure that construction contractors will be furnished a Wage Rate Information Poster (Department of Labor Poster No. SOL–155) promptly upon the making of the award. These posters will be requisitioned through normal distribution channels from Wright-Patterson AFB, attn: EWBFS.

(3) The contracting officer will insure that there is inserted in the blank box in the middle of the poster, in a prominent manner, the name and address of the AF office responsible for the administration of the contract, so that workers may know where to file any complaints they may have as to violations of applicable labor law standards.

2. Section 1012.404–5 is revised as follows:

§ 1012.404–5 Subcontracts.

The prime contractor will submit to the contracting officer a list of all subcontracts and subcontractors to be engaged on work at the site, indicating names and addresses, and nature of work involved. This list will be kept up to date during performance of the contract and will include all subcontractors, not merely first tier subcontractors.

Subpart F—Walsh-Healey Public Contracts Act

1. Section 1012.602 is deleted and the following substituted therefor:

§ 1012.602 Applicability.

2. Sections 1012.602–1 and 1012.602–2 are added as follows:

§ 1012.602–1 General.

The contracting officer is responsible for making the determination as to the applicability of the Walsh-Healey Act to a contemplated procurement. In case of doubt, the matter will be referred to the Staff Judge Advocate, Hq AMC, for advice.

§ 1012.602–2 Department of Labor regulations and interpretations.

To aid in determining applicability, the Secretary of Labor has published a document entitled "Walsh-Healey Public Contracts Act, Rulings and Interpretations No. 3, October 1, 1945." This publication contains a compilation of the text of the Act, the regulations, as amended, of the Secretary of Labor relating thereto; and pertinent rulings and interpretations. Amendments to this document are published from time to time.

(a) *Exemptions.* Pursuant to Section 6 of the Act, the Secretary of Labor has made certain class exemptions from the requirement that the representations and stipulations of Section 1 of the Act be included in AF proposals or contracts which are subject to the Act. Information regarding these exemptions may be obtained from the Regional Directors of the Wage and Hour and Public Contracts Division of the U.S. Department of Labor.

(b) *Exceptions.* Section 6 of the Act (49 Stat. 2038; 41 U.S.C. 40) permits the Secretary of Labor to make exceptions to the requirement that the representations and stipulations of section 1 of the Act be included in department proposals or contracts which are subject to the Act in individual cases.

(1) All requests of present or prospective contractors for exceptions under section 6 of the Act will be addressed to the Commander, AMC. Such requests will be in writing, will be transmitted through the appropriate contracting officer, and will set forth all pertinent information, including the nature of the requested exception, the need therefor, and any action already taken by the contractor to avoid the necessity for the exception.

(2) If the Commander, AMC, concurs in the recommendation of the contracting officer, after review of the request and consideration as to whether the need for an exception can be avoided by using alternative facilities, he will send the request to Director of Procurement and Production, Hq USAF, together with:

(i) A statement of all pertinent data.

(ii) His recommendation.

(iii) A letter stating the need for the exception, addressed to the Secretary of Labor and prepared for the signature of the Secretary of the Air Force.

(iv) Findings of fact as required by section 6 of the Act, prepared for the signature of the Secretary of the Air Force.

Subpart H—Nondiscrimination In Employment

1. Section 1012.804 is deleted and the following substituted therefor:

§ 1012.804 Special requirements or emergencies.

The Nondiscrimination clause requirement represents Government policy, therefore every effort should be made to encourage acceptance of the clause. No request for a deviation will be submitted unless regarded as necessary or clearly in the best interests of the Government, all factors considered.

(a) When, in negotiated procurement, an offeror who would otherwise be qualified for award refuses to accept the clause or requests a modification, and an award omitting the clause or granting such modification is considered necessary or clearly in the best interests of the Government, a request for such deviation will be forwarded to the commander of the air materiel area in which the firm is located. The commander of the air materiel area will personally discuss with the President of the company concerned the inclusion of the clause in the pending contract and if, after such discussion, the firm still refuses to accept the clause, the request for deviation will be forwarded through The Office of the Procurement Committee (MCPC), Hq AMC, to Hq USAF (AFMPP-PR-1) according to § 1001.109-51 of this chapter. In addition to the information required by § 1001.109-51 of this chapter, the contracting officer will include in the request for deviation the following:

(1) Name and location of the offeror requesting the deviation.

(2) Name and title of the official contacted at the offeror's plant or office.

(3) The RFP number and the contract number if one is assigned.

(4) Supplies or services to be furnished.

(5) Estimated or actual delivery schedule.

(6) Type of contract involved and location where it will be performed.

(7) Circumstances surrounding the impracticability of including the Nondiscrimination clause.

(8) Availability of the supplies or services.

(9) Urgency of the requirement.

(10) Any other pertinent information available.

(b) In cases processed under paragraph (a) of this section, which involve purchase of utilities services falling within § 1016.501-2 of this chapter, payment may be made without a written contract pending a final determination thereon, provided that:

(1) The matter has been placed in processing channels according to paragraph (a) of this section.

(2) Services currently are being received.

(3) No connection charge is involved.

(4) The utility's rates are fixed or adjusted by a Federal, State, or other regulatory body.

(5) Invoices are certified as to reasonableness of rates and services performed.

(6) The utility does not require execution of a contract.

(7) A contract is not deemed necessary to serve the best interests of the Government.

In those cases involving a connection charge or otherwise requiring a contract before payment may be made, payment must be withheld pending the action of the President's Committee on Government Contracts.

(c) Report of Bidder's Refusal to Accept the "Nondiscrimination in Employment" Clause (RCS: AF-XOA-N4). In the instance set forth in paragraph (b) of this section, a report containing the following information will be forwarded as soon as possible through the Commander, AMC, attn: MCPC, to the Director of Procurement and Production, Hq USAF, attn: AFMPP-PR-1:

(1) Name and location of bidder refusing to accept the clause.

(2) RFP number and date.

(3) Bidder to whom award was made.

(4) Supplies or services to be furnished.

(5) Dollar difference between bid of bidder refusing to accept the Nondiscrimination clause and bid of next lowest bidder to whom contract was awarded.

(d) In advertised procurement, where the lowest otherwise responsible bidder refuses to accept the clause, his bid will be rejected.

2. Section 1012.805 is added as follows:

§ 1012.805 Interpretations.

See § 12.805 of this title.

3. Section 1012.806-1 is redesignated § 1012.806-2 and a new § 1012.806-1 is inserted as follows:

§ 1012.806-1 General.

The manual entitled "Equal Job Opportunity Program" should be available in all AF contracting offices. This manual can be obtained through normal publications requisitioning channels from World Wide Publications (EWBFW), Wright-Patterson Air Force Base, Ohio.

4. The present § 1012.806-2 is redesignated as § 1012.806-3 and a new paragraph (a)(5) is added as follows:

§ 1012.806-3 Posting of notices.

(a) * * *

(5) The notices, titled "Equal Economic Opportunity," President's Committee on Government Contracts, will be requisitioned through normal distribution channels from USAF Publications and Forms Distribution Branch, Wright-Patterson Air Force Base, Ohio, attn: EWBFW.

§§ 1012.806-3, 1012.806-4, and 1012.806-5 [Redesignation]

5. The present §§ 1012.806-3, 1012.806-4 and 1012.806-5 are redesignated §§ 1012.806-4, 1012.806-5 and 1012.806-6 respectively.

§ 1012.806-7 [Deletion]

6. Section 1012.806-7 is deleted.

(Sec. 8012, 70A Stat. 488; 10 U.S.C. 8012. Interpret or apply secs. 2301-2314, 70A Stat. 127-133; 10 U.S.C. 2301-2314)

[SEAL] CHARLES M. MCDERMOTT,
Colonel, U.S. Air Force, Deputy Director of Administrative Services.

[F.R. Doc. 59-6481; Filed, Aug. 5, 1959; 8:48 a.m.]

Title 6—AGRICULTURAL CREDIT

Chapter IV—Commodity Stabilization Service and Commodity Credit Corporation, Department of Agriculture

SUBCHAPTER B—LOANS, PURCHASES, AND OTHER OPERATIONS

[C.C.C. Grain Price Support Bulletin 1, 1959 Supp. 2, Amdt. 1, Wheat]

PART 421—GRAINS AND RELATED COMMODITIES

Subpart—1959-Crop Wheat Loan and Purchase Agreement Program

The regulations issued by the Commodity Credit Corporation and the Commodity Stabilization Service published in 24 F.R. 1633 and 24 F.R. 3151, containing the specific requirements of the 1959-crop wheat price support program, are hereby amended to also provide discounts for wheat grading "Sample" on the factor of test weight only but having a test weight of not less than 40 pounds per bushel.

Section 421.4047(c)(2) is amended by the addition of a new subdivision (iii) as follows:

(iii) Special discounts for wheat grading "Sample" on the factor of test weight only: [1]

Test weight (pounds)	Discount for Hard Red Spring wheat	Discount for wheat of all other classes
	Cents per bushel	*Cents per bushel*
50	0	4
49	4	8
48	8	12
47	12	16
46	16	20
45	20	24
44	26	30
43	32	36
42	38	42
41	44	48
40	50	54

[1] These discounts are in addition to the discount of 9 cents per bushel for wheat grading No. 5 on the basis of test weight only and in addition to any other applicable discounts.

(Sec. 4, 62 Stat. 1070, as amended; 15 U.S.C. 714b. Interpret or apply sec. 5, 62 Stat. 1072, secs. 101, 401, 63 Stat. 1051, 1054; 15 U.S.C. 714c, 7 U.S.C. 1441, 1421)

Issued this 31st day of July 1959.

CLARENCE D. PALMBY,
Acting Executive Vice President,
Commodity Credit Corporation.

[F.R. Doc. 59-6493; Filed, Aug. 5, 1959; 8:48 a.m.]

[C.C.C. Grain Price Support Bulletin 1, 1959 Supp. 1, Amdt. 2, Wheat]

PART 421—GRAINS AND RELATED COMMODITIES

Subpart—1959-Crop Wheat Loan and Purchase Agreement Program

The regulations issued by the Commodity Credit Corporation and the Commodity Stabilization Service published in 24 F.R. 1633 and 24 F.R. 3151, containing the specific requirements of the 1959-crop wheat price support program, are hereby amended as follows:

1. Section 421.4038(c)(1) is amended to also make wheat grading "Sample" because of test weight only but not less than 40 pounds per bushel eligible for price support if it otherwise grades No. 3 or better so that the amended subparagraph reads as follows:

§ 421.4038 Eligible wheat.

* * * * *

(c) * * *

(1) The wheat must be (i) wheat of any class grading No. 3 or better; (ii) wheat of any class grading No. 4 or 5 because of containing "Durum" and/or "Red Durum" but otherwise grading No. 3 or better; (iii) wheat of any class grading No. 4, 5 or "Sample" on the factor of test weight only but otherwise meeting the requirements stated in subdivision (i) or (ii) of this subparagraph and having a test weight of not less than 40 pounds per bushel; or (iv) wheat of the class Mixed Wheat, consisting of mixtures of grades of eligible wheat as stated in subdivision (i), (ii) or (iii) of this paragraph provided such mixtures are the natural products of the field.

2. Section 421.4040(c) is amended by extending the schedule therein to apply to wheat testing as low as 40 pounds per bushel so that the amended paragraph reads as follows:

§ 421.4040 Determination of quantity.

* * * * *

(c) When the quantity of wheat is determined by measurement, a bushel shall be 1.25 cubic feet of wheat testing 60 pounds per bushel. The quantity determined shall be the following percentages of the quantity determined for 60-pound wheat:

For wheat testing:	Percent
65 pounds or over	108
64 pounds or over, but less than 65 pounds	107
63 pounds or over, but less than 64 pounds	105
62 pounds or over, but less than 63 pounds	103
61 pounds or over, but less than 62 pounds	102
60 pounds or over, but less than 61 pounds	100
59 pounds or over, but less than 60 pounds	98
58 pounds or over, but less than 59 pounds	97
57 pounds or over, but less than 58 pounds	95
56 pounds or over, but less than 57 pounds	93
55 pounds or over, but less than 56 pounds	92
54 pounds or over, but less than 55 pounds	90
53 pounds or over, but less than 54 pounds	88
52 pounds or over, but less than 53 pounds	87
51 pounds or over, but less than 52 pounds	85
50 pounds or over, but less than 51 pounds	83
49 pounds or over, but less than 50 pounds	82
48 pounds or over, but less than 49 pounds	80
47 pounds or over, but less than 48 pounds	78
46 pounds or over, but less than 47 pounds	77
45 pounds or over, but less than 46 pounds	75
44 pounds or over, but less than 45 pounds	73
43 pounds or over, but less than 44 pounds	72
42 pounds or over, but less than 43 pounds	70
41 pounds or over, but less than 42 pounds	68
40 pounds or over, but less than 41 pounds	67

(Sec. 4, 62 Stat. 1070, as amended; 15 U.S.C. 714b. Interpret or apply sec. 5, 62 Stat. 1072, secs. 101, 401, 63 Stat. 1051, 1054; 15 U.S.C. 714c, 7 U.S.C. 1441, 1421)

Issued this 31st day of July 1959.

CLARENCE D. PALMBY,
Acting Executive Vice President,
Commodity Credit Corporation.

[F.R. Doc. 59-6494; Filed, Aug. 5, 1959; 8:49 a.m.]

Title 29—LABOR

Chapter I—National Labor Relations Board

PART 102—RULES AND REGULATIONS, SERIES 7

Runoff Election

By virtue of the authority vested in it by the National Labor Relations Act, 49 Stat. 452, approved July 5, 1935, as amended by the Labor Management Relations Act, 1947, Public Law 101, Eightieth Congress, first session, the National Labor Relations Board hereby issues the following further amendment to its Rules and Regulations, Series 7, as amended, which it finds necessary to carry out the provisions of said Act, such amendment to be effective August 7, 1959.

National Labor Relations Board Rules and Regulations, Series 7, as amended, and as hereby further amended, shall be in force and effect until further amended, or rescinded by the Board.

Dated, Washington, D.C., July 31, 1959.

By direction of the Board.

FRANK M. KLEILER,
Executive Secretary.

In § 102.70 *Runoff election,* delete the second sentence of paragraph (d) in its entirety and substitute therefor the following sentence: "In the event two or more choices receive the same number of ballots and another choice receives no ballots and there are no challenged ballots that would affect the results of the election, and if all eligible voters have cast valid ballots, there shall be no runoff election and a certification of results of election shall be issued."

(Sec. 6, 49 Stat. 452, as amended; 29 U.S.C. 156)

The above amendment shall be effective August 7, 1959.

[F.R. Doc. 59-6473; Filed, Aug. 5, 1959; 8:46 a.m.]

Title 38—PENSIONS, BONUSES, AND VETERANS' RELIEF

Chapter I—Veterans Administration

PART 36—LOAN GUARANTY

Release of Security

Section 36.4324(f) is amended to read as follows:

§ 36.4324 Release of security.

* * * * *

(f) The release of the personal liability of any obligor on a guaranteed or insured obligation resultant from the act or omission of any holder without the prior approval of the Administrator shall release the obligation of the Administrator as guarantor or insurer, except when such act or omission consists of (1) failure to establish the debt as a valid claim against the assets of the estate of any deceased obligor, provided no lien for the guaranteed or insured debt is thereby impaired or destroyed; or (2) an election and appropriate prosecution of legally available effective remedies with respect to the repossession or the liquidation of the security in any case, irrespective of the identity or the survival of the original or of any subsequent debtor, if holder shall have given such notice as required by § 36.4317 and if, after receiving such notice, the Administrator shall have failed to notify the holder within 15 days to proceed in such manner as to effectively preserve the personal liability of the parties liable, or such of them as the Administrator indicates in such notice to the holder; or (3) the release of an obligor, or obligors, from liability on an obligation secured by a lien on property, which release is an incident of and contemporaneous with the sale of such property to an eligible veteran who assumed such obligation, which assumed obligation is guaranteed on his account pursuant to 38 U.S.C.,

ch. 37; or (4) the release of an obligor or obligors as provided in § 36.4314(d).

This regulation is effective August 6, 1959.

[SEAL] BRADFORD MORSE,
Deputy Administrator.

[F.R. Doc. 59-6476; Filed, Aug. 5, 1959; 8:47 a.m.]

Title 43—PUBLIC LANDS: INTERIOR

Chapter I—Bureau of Land Management, Department of the Interior

APPENDIX—PUBLIC LAND ORDERS

[Public Land Order 1930]

MONTANA

Withdrawing Lands for Use of the Bureau of Land Management as an Administrative Site. Partially Revoking the Executive Order of June 5, 1919 Which Established Public Water Reserve No. 64

By virtue of the authority vested in the President by the act of June 25, 1910 (36 Stat. 847; 43 U.S.C. 141), and otherwise, and pursuant to Executive Order No. 10355 of May 26, 1952, it is ordered as follows:

1. Subject to valid existing rights, the following-described public lands in Montana are hereby withdrawn from all forms of appropriation under the public land laws, including the mining but not the mineral leasing laws or disposals of materials under the act of July 31, 1947 (61 Stat. 681; 30 U.S.C. 601–604), as amended, and reserved for use of the Bureau of Land Management, Department of the Interior, for a radio relay station:

[Montana 030861]

PRINCIPAL MERIDIAN

T. 17 N., R. 20 E.,
Tract 38 (in section 19).
Totaling 3.79 acres.

2. The Executive order of June 5, 1919, which established Public Water Reserve No. 64, is hereby revoked so far as it affects the following-described lands:

[Montana 025424]

PRINCIPAL MERIDIAN

T. 12 N., R. 20 E.,
Sec. 17, NW¼SE¼.
Totaling 40 acres.

3. The State of Montana has waived the preference right of application granted to it by subsection (c) of section 2 of the Act of August 27, 1958 (72 Stat. 928; 43 U.S.C. 851, 852).

4. The lands described in paragraph 2 are located in the mountains southeast of Lewistown, Montana. Topography is rolling to rough with a rocky spur projecting into the southeast corner. Vegetation consists of slender, and Western wheat grass, blue grass, sage brush and weeds.

5. No application for the lands described in paragraph 2 may be allowed under the homestead, desert-land, small tract, or any other nonmineral public-land law unless the lands have already been classified as valuable or suitable for such type of application, or shall be so classified upon the consideration of an application. Any application that is filed will be considered on its merits. The lands will not be subject to occupancy or disposition until they have been classified.

6. Subject to any valid existing rights and the requirements of applicable law, the lands are hereby opened to filing of applications, selections, and locations in accordance with the following:

a. Applications and selections under the nonmineral public-land laws may be presented to the Manager mentioned below, beginning on the date of this order. Such applications and selections will be considered as filed on the hour and respective dates shown for the various classes enumerated in the following paragraphs:

(1) Applications by persons having prior existing valid settlement rights, preference rights conferred by existing laws, or equitable claims subject to allowance and confirmation will be adjudicated on the facts presented in support of each claim or right. All applications presented by persons other than those referred to in this paragraph will be subject to the applications and claims mentioned in this paragraph.

(2) All valid applications under the Homestead, Desert Land, and Small Tract Laws by qualified veterans of World War II or of the Korean Conflict, and by others entitled to preference rights under the act of September 27, 1944 (58 Stat. 747; 43 U.S.C. 279–284, as amended), presented prior to 10:00 a.m. on September 4, 1959, will be considered as simultaneously filed at that hour. Rights under such preference right applications filed after that hour will be governed by the time of filing.

(3) All valid applications and selections under the nonmineral public-land laws, other than those coming under paragraphs (1) and (2) above, presented prior to 10:00 a.m. on December 4, 1959, will be considered as simultaneously filed at that hour. Rights under such applications and selections filed after that hour will be governed by the time of filing.

b. The land has been open to applications and offers under the mineral-leasing laws, and to location for metalliferous minerals. It will be open to location for non-metalliferous minerals under the United States mining laws beginning at 10:00 a.m. on December 4, 1959.

7. Persons claiming veterans preference rights must enclose with their applications proper evidence of military or naval service, preferably a complete photostatic copy of the certificate of honorable discharge. Persons claiming preference rights based upon valid settlement, statutory preference, or equitable claims must enclose properly corroborated statements in support of their claims. Detailed rules and regulations governing applications which may be filed pursuant to this notice can be found in Title 43 of the Code of Federal Regulations.

Inquiries concerning the lands shall be addressed to the Manager, Land Office, Bureau of Land Management, Billings, Montana.

ROGER ERNST,
Assistant Secretary of the Interior.

JULY 30, 1959.

[F.R. Doc. 59-6468; Filed, Aug. 5, 1959; 8:45 a.m.]

[Public Land Order 1932]

[Fairbanks 019125]

ALASKA

Withdrawing Public Lands for Use of the Department of the Air Force for Military Purposes

By virtue of the authority vested in the President and pursuant to Executive Order No. 10355 of May 26, 1952, it is ordered as follows:

1. Subject to valid existing rights, the following-described public lands in Alaska are hereby withdrawn from all forms of appropriation under the public land laws, including the mining and mineral-leasing laws, but not the disposal of materials under the act of July 31, 1947 (61 Stat. 681; 30 U.S.C. 601–604) as amended, and reserved for use of the Department of the Air Force, for military purposes:

POINT BARROW AIR FORCE STATION

TRACT A

A parcel of land situated 4.5 miles northeast of Barrow in the Second Judicial Division, State of Alaska, more specifically described as follows:

Beginning at USC&GS Station "Point Barrow—South Base," thence
West, 4,632.83 feet;
North, 146.00 feet, to a point on the mean high water line of the fresh water lake (unnamed);
Northerly, 3,550.00 feet, along said m.h.w. line;
N. 50° E., 700.00 feet;
North, 750.00 feet;
East, 600.00 feet, to a point on the mean high tide line of a salt water lagoon;
Southerly and Easterly, 6,265.00 feet, along said m.h.t. line;
East, 500.00 feet;
South, 2,036.30 feet;
West, 867.12 feet to the point of beginning.

The tract described contains 267.87 acres.

2. The reservation made by this order shall be subject to the withdrawal made by Executive Order No. 3797–A of February 27, 1923, for oil and gas as Navy Petroleum Reserve No. 4 and to the jurisdiction granted to the Department of the Navy over Naval Petroleum Reserves by the act of August 10, 1956 (70A Stat. 457–462; 10 U.S.C. 7421–7438), and shall take precedence over but not otherwise affect the withdrawal made by Public Land Order No. 82 in connection with the prosecution of the war, and Public Land Order No. 324 of August 14, 1946, reserving this and other lands for classification and designation as a native reserve.

3. Scientific Personnel of the Arctic Research Laboratory shall have access to

the area for research purposes, at such times and under such conditions as shall not unduly interfere with use of the lands for Air Force purposes.

ROGER ERNST,
Assistant Secretary of the Interior.

[F.R. Doc. 59-6470; Filed, Aug. 5, 1959; 8:46 a.m.]

[Public Land Order 1933]

[Oregon 05952]

OREGON

Withdrawing Lands for Use of the Department of the Air Force for Air Navigation Facilities (Klamath Falls Air Force Station)

By virtue of the authority vested in the President and pursuant to Executive Order No. 10355 of May 26, 1952, and Section 4 of the Act of May 24, 1928 (45 Stat. 729; 49 U.S.C. 214), it is ordered as follows:

1. Subject to valid existing rights, the following-described public and revested Oregon and California Railroad grant lands in Oregon are hereby withdrawn from all forms of appropriation under the public land laws, including the mining and mineral leasing laws but not disposals of materials under the Act of July 31, 1947 (61 Stat. 681; 30 U.S.C. 601-604) as amended, and reserved under jurisdiction of the Secretary of the Interior for use of the Department of the Air Force in the maintenance of air navigation facilities connected with the Klamath Falls Air Force Station, under such conditions as may be prescribed by the Secretary of the Interior or his delegate:

WILLAMETTE MERIDIAN

T. 40 S., R. 7 E.,
Sec. 22, lot 1;
Sec. 23, SW¼SW¼ and W½SE¼SW¼;
Sec. 27, NE¼NE¼.

The areas described aggregate 139.81 acres.

2. The timber on the lands shall remain under the administration of the Bureau of Land Management. That on the revested Oregon and California Railroad grant lands (secs. 23 and 27), shall be managed, sold, cut, and removed in conformity with the principles of sustained-yield as provided by the Act of August 28, 1937 (50 Stat. 874), and consistent with the concurrent use of the lands for the air navigation purposes provided by this order.

ROGER ERNST,
Assistant Secretary of the Interior.

JULY 31, 1959.

[F.R. Doc. 59-6471; Filed, Aug. 5, 1959; 8:46 a.m.]

PROPOSED RULE MAKING

ATOMIC ENERGY COMMISSION

[10 CFR Part 70]

SPECIAL NUCLEAR MATERIAL

Notice of Proposed Rule Making

The following proposed amendment is designed to establish a periodic reporting requirement for holders of special nuclear material licenses issued pursuant to the regulations in Part 70, Chapter 1, Title 10, Code of Federal Regulations.

The proposed reporting requirement would provide information semiannually as to the location of special nuclear material, and information needed in computing use, loss of material and related charges for special nuclear material.

Notice is hereby given that adoption of the following amendment to 10 CFR Part 70 is contemplated. All interested persons who desire to submit written comments and suggestions for consideration in connection with the proposed amendment should send them to the U.S. Atomic Energy Commission, Washington 25, D.C., Attention: Director, Division of Licensing and Regulation, within 60 days after publication of this notice in the FEDERAL REGISTER. Copies of Form AEC-578 referred to in the proposed amendment will be furnished upon request.

§§ 70.53, 70.54 [Redesignations]

1. Redesignate §§ 70.53 and 70.54 as §§ 70.54 and 70.55, respectively.

2. Add the following new § 70.53:

§ 70.53 Material status reports.

Each licensee shall submit to the Commission on Form AEC-578 [1] reports concerning special nuclear material distributed by the Commission pursuant to section 53 of the Act and received, transferred or possessed by the licensee or for which the licensee is financially responsible. Such reports shall be made as of December 31 and June 30 of each year and shall be filed with the Commission within 30 days after the end of the period covered by the report. The Commission may permit the licensee to submit such reports at other times when good cause is shown.

Dated at Germantown, Md., this 28th day of July 1959.

For the Atomic Energy Commission.

A. R. LUEDECKE,
General Manager.

[F.R. Doc. 59-6463; Filed, Aug. 5, 1959; 8:45 a.m.]

NOTICES

DEPARTMENT OF THE TREASURY

Bureau of Customs

[T. D. 54908]

SHELL OIL CO.

Notice of Qualification as a Citizen of the U.S.

JULY 31, 1959.

This is to give notice that pursuant to § 3.21, Customs Regulations, issued under the provisions of section 27A of the Merchant Marine Act, 1920, as added by the Act of September 2, 1958 (46 U.S.C. 883-1), the Shell Oil Company of 50 West 50th Street, New York 20, New York, incorporated under the laws of the State of Delaware, did on July 15, 1959, file with the Commissioner of Customs in duplicate an oath for qualification of a corporation as a citizen of the United States following the form of oath prescribed in customs Form 1260.

The oath shows that:

(a) A majority of the officers and directors of the corporation are citizens of the United States (list of names, home addresses, and citizenship attached to the oath);

(b) Not less than 90 percent of the employees of the corporation are residents of United States;

(c) The corporation is engaged primarily in a manufacturing or mineral industry in the United States, or in a Territory, District, or possession thereof;

(d) The aggregate book value of the vessels owned by the corporation does not exceed 10 percent of the aggregate book value of the assets of the corporation; and

(e) The corporation purchases or produces in the United States, its Territories or possessions not less than 75 percent of the raw materials used or sold in its operations.

The Commissioner of Customs having found this oath to be in compliance with

[1] Form and instructions filed as part of the original document.

the law and regulations, on July 15, 1959, issued to the Shell Oil Company a certificate of compliance on customs Form 1262 as provided in § 3.21(i) of the regulations. The certificate and any authorization granted thereunder will expire three years from the date thereof unless there first occurs a change in the corporate status requiring a report under § 3.21(h) of the regulations.

[SEAL] C. A. EMERICK,
Acting Commissioner of Customs.

[F.R. Doc. 59-6489; Filed, Aug. 5, 1959; 8:48 a.m.]

[342.5]

PINK BEADS SIMILAR IN COLOR AND TEXTURE TO TYPE OF PINK CORAL KNOWN AS "ANGEL SKIN"

Notice of Change of Tariff Classification

JULY 31, 1959.

The Bureau of Customs published a notice in the FEDERAL REGISTER dated May 27, 1959, that there was under review the practice of classifying certain pink beads similar in color and texture to a type of pink coral known as "angel skin" as beads, not specially provided for, under paragraph 1503, Tariff Act of 1930, dutiable at the rate of 15 percent ad valorem under that paragraph, as modified. Evidence presented to the Bureau shows that these beads are in imitation of a type of pink coral. Accordingly, the Bureau by its letter to the collector of customs at New York, New York, dated July 31, 1959, ruled that these articles are properly classifiable under paragraph 1503 as beads in imitation of precious or semi-precious stones, dutiable at the rate of 19 percent ad valorem under that paragraph, as modified.

As this ruling will result in the assessment of duty at a higher rate than has heretofore been assessed under a uniform and established practice, it shall be applied to such or similar merchandise only when entered, or withdrawn from warehouse, for consumption after 90 days after the date of publication of an abstract of this decision in the weekly Treasury Decisions.

C. A. EMERICK,
Acting Commissioner of Customs.

[F.R. Doc. 59-6490; Filed, Aug. 5, 1959; 8:48 a.m.]

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[Utah (I-26)]

UTAH

Notice of Proposed Withdrawal and Reservation of Lands

JULY 28, 1959.

The Bureau of Reclamation has filed an application, Serial No. U-035987, for the withdrawal of the land described below, under the first form of withdrawal as provided by section 3 of the Act of June 17, 1902 (32 Stat. 388). The applicant desires the land for reservoir and material sites in connection with the Emery County Project, Utah.

For a period of 30 days from the date of publication of this notice, persons having cause may present their objections in writing to the undersigned official of the Bureau of Land Management, P.O. Box No. 777, Salt Lake City 10, Utah.

If circumstances warrant, a public hearing will be held at a convenient time and place which will be announced.

The determination of the Secretary of the Interior on the application will be published in the FEDERAL REGISTER. A separate notice will be sent to each interested party of record.

The lands requested for withdrawal are as follows:

SALT LAKE MERIDIAN, UTAH

T. 17 S., R. 6 E.,
Sec. 29: SW¼SW¼;
Sec. 32: W½.
T. 18 S., R. 6 E.,
Sec. 5: W½SE¼;
Sec. 6: NE¼SW¼.

The above area aggregates 480 acres.

VAL B. RICHMAN,
State Supervisor.

[F.R. Doc. 59-6472; Filed, Aug. 5, 1959; 8:46 a.m.]

Geological Survey

[Survey Order 214]

CERTAIN OFFICIALS AND EMPLOYEES OF THE GEOLOGICAL SURVEY

Redelegation of Authority To Enter Into Contracts

JULY 30, 1959.

Under authority delegated to heads of bureaus by the Secretary of the Interior in section 50, Order 2509, as amended (17 F.R. 6793, 19 F.R. 433, and F.R. 7417), redelegation of authority to officials and employees of the Geological Survey is hereby made, to become effective August 17, 1959, in accordance with the terms and conditions set forth in the following paragraphs. Existing authorizations to act as contracting officers will continue in full force and effect through August 16, 1959.

The redelegation hereby made is of authority, on behalf of the United States and the Geological Survey, to enter into contracts for construction, supplies, or services, in conformity with applicable regulations and statutory requirements and subject to the availability of appropriations; with respect to any such contract, to issue change orders and extra work orders pursuant to the contracts, to enter into modifications of the contract which are legally permissible, and to terminate the contract if such action is legally authorized. This authority is redelegated under categories depending upon the amount involved.

(1) Irrespective of the amount involved, to:

Executive Officer.

(2) Irrespective of the amount involved, for contracts for construction required to carry out the functions of the Engineering Exploration Unit; Geologic Division, to:

Chief, Engineering Exploration Unit.

Any contract exceeding $5,000, however, shall be made subject to the written approval of the Executive Officer and the contract shall not be binding until so approved.

(3) With respect to contracts not exceeding $25,000 in amount, to:

Chief, Branch of Service and Supply; Procurement Officer.

(4) With respect to contracts not exceeding $5,000 in amount, to:

Assistant Procurement Officer; Management Officers, Denver, Colorado; Menlo Park, California; and Fairbanks, Alaska.

(5) With respect to contracts for construction, including drilling, not exceeding $2,000, to:

Branch Chiefs, Water Resources Division; Branch Area Chiefs, Water Resources Division; Chief, Instrumentation Unit, Research Section Surface Water Branch, Water Resources Division, Columbus, Ohio.

This order supersedes Survey Order 214 (21 F.R. 8513) and Amendment No. 1 thereto (21 F.R. 10432).

ARTHUR A. BAKER,
Acting Director.

[F.R. Doc. 59-6467; Filed, Aug. 5, 1959; 8:45 a.m.]

ATOMIC ENERGY COMMISSION

[Docket 50-143]

INTERNATIONAL GENERAL ELECTRIC CO.

Notice of Filing of Application for Utilization Facility Export License

Please take notice that General Electric Company through its agent International General Electric Company, 150 East 42d Street, New York 17, New York, has submitted an application dated July 2, 1959, for a license to export a 1,000-kilowatt open pool-type research reactor to the Philippine Atomic Energy Commission, Manila, the Republic of the Philippines.

Pursuant to section 104 of the Atomic Energy Act of 1954, and Title 10, CFR, Chapter 1, Part 50, "Licensing of Production and Utilization Facilities", and upon finding that (a) the reactor proposed to be exported is a utilization facility as defined in said Act and regulations, and (b) the issuance of a license for the export thereof is within the scope of and is consistent with the terms of an Agreement for Cooperation with the Republic of the Philippines, the Commission may issue a facility export license authorizing the export of the reactor to the Philippines.

In its review of applications solely to authorize the export of production or utilization facilities, the Commission does not evaluate the health and safety characteristics of the subject reactor.

In accordance with the procedures set forth in the Commission's rules of prac-

tice (10 CFR Part 2) a petition for leave to intervene in these proceedings must be served upon the parties and filed with the Atomic Energy Commission within 30 days after the filing of this notice with the Federal Register Division.

A copy of the application is on file in the AEC Public Document Room located at 1717 H Street NW., Washington, D.C.

Dated at Germantown, Md., this 30th day of July 1959.

For the Atomic Energy Commission.

R. L. KIRK,
Deputy Director, Division of Licensing and Regulation.

[F.R. Doc. 59-6464; Filed, Aug. 5, 1959; 8:45 a.m.]

SMALL BUSINESS ADMINISTRATION

[Declaration of Disaster Area 231]

TEXAS

Declaration of Disaster Area

Whereas, it has been reported that during the month of July, 1959, because of the effects of certain disasters, damage resulted to residences and business property located in certain areas in the State of Texas;

Whereas, the Small Business Administration has investigated and has received other reports of investigations of conditions in the areas affected;

Whereas, after reading and evaluating reports of such conditions, I find that the conditions in such areas constitute a catastrophe within the purview of the Small Business Act.

Now, therefore, as Administrator of the Small Business Administration, I hereby determine that:

1. Applications for disaster loans under the provisions of section 7(b) of the Small Business Act may be received and considered by the Offices below indicated from persons or firms whose property situated in the following Counties (including any areas adjacent to said Counties) suffered damage or other detruction as a result of the catastrophe hereinafter referred to:

Counties: Brazoria, Galveston and Harris (hurricane occurring on or about July 25, 1959).

Offices: Small Business Administration Regional Office, Fidelity Building, 1000 Main Street, Dallas 2, Tex. Small Business Administration Branch Office, Veterans Administration Building, 1424 Hadley Street, Houston 2, Tex.

2. No special field offices will be established at this time.

3. Applications for disaster loans under the authority of this Declaration will not be accepted subsequent to January 31, 1960.

Dated: July 27, 1959.

WENDELL B. BARNES,
Administrator.

[F.R. Doc. 59-6474; Filed, Aug. 5, 1959; 8:46 a.m.]

GENERAL SERVICES ADMINISTRATION

[Delegation of Authority 366]

ATTORNEY GENERAL

Delegation of Authority To Lease Real Property Near Anchorage, Alaska

1. Pursuant to authority vested in me by the Federal Property and Administrative Services Act of 1949 (63 Stat. 377), as amended, authority is hereby delegated to the Attorney General of the United States to procure by lease, necessary real property near Anchorage, Alaska, with improvements for radio transmitting and receiving purposes, to be constructed thereon by the lessor, for a term not in excess of five years, in accordance with section 210(h)(1) of the Federal Property and Administrative Services Act of 1949, as amended (72 Stat. 294, 40 U.S.C. 490(h)(1)).

2. This authority shall be exercised in accordance with applicable limitations and requirements of the Act.

3. Any such lease shall be executed by December 31, 1959 and may be renewed for two successive terms of five years each.

4. The rental under any such lease shall not exceed that permitted by the terms of the Economy Act (40 U.S.C. 278a), and in no event shall such rental exceed the sum of ten thousand dollars ($10,000) per annum.

5. The Attorney General of the United States may re-delegate this authority to any officer or employee of the Department of Justice.

6. This Delegation of Authority shall be effective as of the date hereof.

Dated: July 30, 1959.

FRANKLIN FLOETE,
Administrator of General Services.

[F.R. Doc. 59-6491; Filed, Aug. 5, 1959; 8:48 a.m.]

FEDERAL POWER COMMISSION

[Docket Nos. 19024-19029]

BRITISH AMERICAN OIL PRODUCING CO. ET AL.

Order for Hearings and Suspending Proposed Changes in Rates [1]

JULY 30, 1959.

In the matters of The British American Oil Producing Company, Docket No. G-19024; Edwin L. Cox, Docket No. G-19025; North Central Oil Corporation et al., Docket No. G-19026; Continental Oil Company, Docket No. G-19027; Landa Oil Company, Docket No. G-19028; Kirby Production Company (Operator) et al., Docket No. G-19029.

The above-named Respondents have tendered for filing proposed changes in presently effective rate schedules for their sales of natural gas subject to the jurisdiction of the Commission. The proposed changes are designated as follows:

Docket No.	Respondent	Rate schedule No.	Supplement No.	Purchaser	Notice of change dated—	Date tendered	Effective date [2] unless suspended	Date suspended until —[3]
G-19024	The British American Oil Producing Co.	9	7	Kansas-Nebraska Natural Gas Co., Inc.	7- 1-59	7- 1-59	8- 1-59	1- 1-60
G-19025	Edwin L. Cox	[4] 22	4	Natural Gas Pipeline Co. of America.	6-22-59	6-29-59	7-30-59	12-30-59
G-19026	North American Oil Corp., et al.	2	[5] 7	United Gas Pipe Line Co.	4-21-59	7- 6-59	8- 6-59	1- 6-60
		2	8		5-29-59	7- 6-59	8- 6-59	1- 6-60
G-19027	Continental Oil Co.	169	[6] 3	Texas Eastern Transmission Corp.	7-24-59	7- 6-59	8- 6-59	1- 6-60
		169	4		7- 2-59	7- 6-59	8- 6-59	1- 6-60
G-19028	Landa Oil Co	1	10	Texas Eastern Transmission Corp.	7- 2-59	7- 6-59	8- 6-59	1- 6-60
G-19029	Kirby Production Co. (operator), et al.	5	5	Lone Star Gas Co.	Undated	7- 8-59	8- 8-59	1- 8-60

[2] The stated effective dates are those requested by Respondents or the first day after the expiration of statutory notice, whichever is later.
[3] And until such further time as each is made effective in the manner prescribed by the Natural Gas Act.
[4] Rate currently in effect subject to refund in Docket No. G-17149.
[5] Supplementary Agreement.
[6] Letter dated July 24, 1957.

In support of the proposed rate changes, British American, Cox, Kirby and North Central cite their contractual covenants and state that the pricing provisions were either negotiated at arms length, that such taken in their entirety represent the negotiated contract price, or that the proposed rates are integral parts of the contracts and therefore constitute initial rate filings, or such constitute installment pricing arrangements.

Cox also avers that the periodic increase type of pricing arrangement is common in long term contracts and is beneficial to the buyer, seller and the public. Kirby contends that the same reasoning applies to the favored-nations type of increase and submits a favored-nation notification letter dated May 12, 1959, wherein Lone Star agrees to the increased price. North Central states that the parties agreed to substitute fixed periodic increases in lieu of a pricing formula subject to monthly changes and revisions and that the proposed increased

[1] This order does not provide for the consolidation for hearing or disposition of the separately docketed matters covered herein, nor should it be so construed.

rate is necessary to offset rising costs, the trend to deeper drilling and the trend toward smaller discoveries.

British American further avers that pursuant to the agreement, it, free of charge, delivered in excess of 8 million mcf of casinghead gas to Kansas-Nebraska during the period from August 1, 1953 to May 31, 1959. Although by its contract British American agrees to deliver the casinghead gas to Kansas-Nebraska free of charge because, as stated therein, "British American considers the cost of gathering and compressing said gas to be uneconomical * * *", British American contends that if that volume of casinghead gas is considered with the 5,357,792 mcf of well head gas delivered during the same period, the unit price of gas delivered under its FPC Gas Rate Schedule No. 9 would be substantially reduced. The company, however, has supplied no cost data as to such operations and, in view of the contractual provisions, it would appear that any monetary value assigned to such gas may be conjectural.

Continental Oil and Landa Oil each propose a two-part rate increase based upon (1) a favored-nations contract provision and (2) the expiration of a one-cent per mcf deduction for gas produced in the Carthage Field as such is provided in the contracts on file as rate schedules. Each, in support of the proposed increased rate, tenders a favored-nations notification letter from the buyer of its gas.

The increased rates and charges so proposed have not been shown to be justified, and may be unjust, unreasonable, unduly discriminatory or preferential, or otherwise unlawful.

The Commission finds: it is necessary and proper in the public interest and to aid in the enforcement of the provisions of the Natural Gas Act that the Commission enter upon hearings concerning the lawfulness of the several proposed changes and that the above-designated supplements be suspended and the use thereof deferred as hereinafter ordered.

The Commission orders:

(A) Pursuant to the authority of the Natural Gas Act, particularly sections 4 and 15 thereof, the Commission's rules of practice and procedure, and the regulations under the Natural Gas Act (18 CFR Ch. I), public hearings shall be held upon dates to be fixed by notices from the Secretary concerning the lawfulness of the several proposed increased rates and charges contained in the above-designated supplements.

(B) Pending hearings and decisions thereon, Supplement No. 7 to British American's FPC Gas Rate Schedule No. 9 is hereby suspended and the use thereof deferred until January 1, 1960; Supplement No. 4 to Cox's FPC Gas Rate Schedule No. 22 is hereby suspended and the use thereof deferred until December 30, 1959; Supplements Nos. 7 and 8 to North Central's FPC Gas Rate Schedule No. 2, Supplements Nos. 3 and 4 to Continental Oil's FPC Gas Rate Schedule No. 169, and Supplement No. 10 to Landa Oil's FPC Gas Rate Schedule No. 1 are each hereby suspended and the use thereof deferred until January 6, 1960; and Supplement No. 5 to Kirby's FPC Gas Rate Schedule No. 5 is hereby suspended and the use thereof deferred until January 8, 1960; and such suspension and deferred use as to each of the foregoing shall continue until such further time as each is made effective in the manner prescribed by the Natural Gas Act.

(C) Neither the supplements hereby suspended, nor the rate schedules sought to be altered thereby shall be changed until the respective proceeding has been disposed of or until the related period of suspension has expired, unless otherwise ordered by the Commission.

(D) Interested State commissions may participate as provided by §§ 1.8 and 1.37(f) of the Commission's rules of practice and procedure (18 CFR 1.8 and 1.37(f)).

By the Commission (Commissioners Kline and Hussey dissenting).

JOSEPH H. GUTRIDE,
Secretary.

[F.R. Doc. 59-6465; Filed, Aug. 5, 1959; 8:45 a.m.]

[Docket No. G-19023]

PENN-JERSEY PIPE LINE CO.

Order Providing for Hearing and Suspending Proposed Revised Tariff Sheet

JULY 29, 1959.

Penn-Jersey Pipe Line Company (Penn-Jersey), on June 29, 1959, tendered for filing First Revised Sheet No. 5 to its FPC Gas Tariff, Original Volume No. 1, proposing a change in the treatment of Federal income tax accruals under its cost formula type Rate Schedule T-1. An effective date of July 29, 1959, for the filing is requested.

Penn-Jersey's present tariff contains a single rate schedule for the transportation of gas under a cost formula rate including depreciation at 3½ percent, return at 6 percent, actual operation, maintenance and tax expenses, credits for other income and a proportionate part of the total administrative and general expenses of both Penn-Jersey and City Gas Company of Phillipsburg, New Jersey. Under such tariff, income and other taxes are accrued monthly and adjusted annually to actual amounts paid.

The proposed tariff sheet adds the following provision to the rate: "When Penn-Jersey elects to be treated as a 'small business corporation' for income tax purposes as permitted under subchapter S, sections 1371 and 1377 of the Internal Revenue Code * * * and fulfills the eligibility requirements thereof for any taxable year, the amount of accrual determined as of the end of such taxable year shall be the amount of the normal corporate income tax which would have been payable had such election not have been made. The amount of accrual shall be transferred to the earned surplus account."

Penn-Jersey advises that it proposes to be treated as such a small business corporation; that the effect of such election is to have the corporation treated as a partnership. Thus no income tax will actually be paid by Penn-Jersey directly. The company states that it plans to distribute to the shareholders (partners), in the form of dividends, the same amount as it would have paid for income taxes. Such distribution would be in addition to the dividends declared from net income after taxes.

Penn-Jersey states that the proposed change would have no effect on the present level of charges for the transportation service which it renders. The proposed charge would (1) include in the cost formula an amount of money for Federal income taxes different from that which Penn-Jersey would actually incurr; (2) is indefinite since Penn-Jersey may make an election each year as to whether or not it shall be treated as a small business corporation, and (3) may be inconsistent with the Commission's Uniform System of Accounts.

The proposed tariff change has not been shown to be justified, and may be unjust, unreasonable, unduly discriminatory, or preferential, or otherwise unlawful.

The Commission finds: It is necessary and proper in the public interest, and to aid in the enforcement of the provisions of the Natural Gas Act, that the Commission enter upon a hearing concerning the lawfulness of the rates, charges, classification, and services contained in Penn-Jersey's FPC Gas Tariff, Original Volume No. 1, as proposed to be amended by First Revised Sheet No. 5, and that such proposed tariff sheet and the rates contained therein be suspended and the use thereof deferred as hereinafter provided.

The Commission orders:

(A) Pursuant to the authority of the Natural Gas Act, particularly sections 4 and 5 thereof, the Commission's rules of practice and procedure, and the regulations under the Natural Gas Act (18 CFR Ch. I), a public hearing be held on a date to be fixed by notice from the Secretary concerning the lawfulness of the rates, charges, classifications, and services contained in Penn-Jersey's FPC Gas Tariff, Original Volume No. 1, as proposed to be amended by First Revised Sheet No. 5.

(B) Pending such hearing and decision thereon, Penn-Jersey's proposed First Revised Sheet No. 5 to its FPC Gas Tariff, Original Volume No. 1, be and it is hereby suspended and the use thereof deferred until December 29, 1959, and until such further time as it may be made effective in the manner prescribed by the Natural Gas Act.

(C) Interested State commissions may participate as provided by §§ 1.8 and 1.37(f) of the Commission's rules of practice and procedure (18 CFR 1.8 and 1.37(f)).

By the Commission.

JOSEPH H. GUTRIDE,
Secretary.

[F.R. Doc. 59-6466; Filed, Aug. 5, 1959; 8:45 a.m.]

INTERSTATE COMMERCE COMMISSION

FOURTH SECTION APPLICATIONS FOR RELIEF

AUGUST 3, 1959.

Protests to the granting of an application must be prepared in accordance with Rule 40 of the general rules of practice (49 CFR 1.40) and filed within 15 days from the date of publication of this notice in the FEDERAL REGISTER.

LONG-AND-SHORT HAUL

FSA No. 35601: *Substituted service—Pa. R.R. for Motor Cargo, Inc.* Filed by The Eastern Central Motor Carriers Association, Inc., Agent (No. 113), for interested carriers. Rates on property loaded in trailers, and empty trailers transported on railroad flat cars between (a) Indianapolis, Ind., and Kearny, N.J., Harrisburg or Philadelphia, Pa., and (b) Chicago, East St. Louis, Ill., or Cleveland, Ohio, and Harrisburg, Pa., on traffic originating at or destined to points in territories described in the application.

Grounds for relief: Motor truck competition.

Tariff: Supplement 5 to The Eastern Central Motor Carriers Association tariff MF–I.C.C. No. A–158.

FSA No. 35602: *Substituted service—Pennsylvania Railroad for motor carriers.* Filed by The Eastern Central Motor Carriers Association, Inc., Agent (No. 114), for interested carriers. Rates on property loaded in trailers, also empty trailers, transported on railroad flat cars between (a) Chicago, Ill., and Kearny, N.J., or Harrisburg or Philadelphia, Pa., and (b) Detroit, Mich., Ft. Wayne, Ind., or Toledo, Ohio, and Kearny, N.J., or Harrisburg or Philadelphia, Pa., on traffic originating at or destined to points in territories described in the application.

Grounds for relief: Motor truck competition.

Tariff: Supplement 5 to The Eastern Central Motor Carriers Association, Inc., tariff MF–I.C.C. No. A–158

FSA No. 35603: *Substituted service—Pennsylvania Railroad for motor carriers.* Filed by The Eastern Central Motor Carriers Association, Inc., Agent (No. 115), for interested carriers. Rates on property loaded in trailers, also empty trailers transported on railroad flat cars between Cincinnati, Cleveland or Toledo, Ohio, on the one hand, and Baltimore, Md., on the other, on traffic originating at or destined to points in territories described in the application.

Grounds for relief: Motor truck competition.

Tariff: Supplement 5 to The Eastern Central Motor Carriers Association, Inc., tariff MF–I.C.C. No. A–158.

FSA No. 35604: *Phosphate rock—Florida Mines to southwestern points.* Filed by O. W. South, Jr., Agent (SFA No. A3829), for interested rail carriers. Rates on phosphate rock, carloads, as described in the application from Bartow, Fla., and other mines in Florida to Texarkana, Ark-Tex., Lecox, Muskogee, Tulsa, Okla., and Nacogdouches, Tex.

Grounds for relief: Competition of carriers by rail-barge-rail routes.

Tariff: Supplement 135 to Southern Freight Association tariff I.C.C. 1514.

FSA No. 35605: *Gravel—Riverton, Ind., to Helm Siding, Ill.* Filed by Illinois Freight Association, Agent (No. 72), for interested rail carriers. Rates on screened road-surfacing gravel, carloads from Riverton, Ind., to Helm Siding, Ill.

Grounds for relief: Motor truck competition from gravel pit to jobsite.

Tariff: Supplement 69 to Illinois Central Railroad Company tariff I.C.C. A–11687.

FSA No. 35606: *Lime to the south.* Filed by Southwestern Freight Bureau, Agent (No. B–7601), for interested rail carriers. Rates on lime, common, hydrated, quick or slacked, carloads, as described in the application from specified points in Arkansas, Louisiana, Missouri, Oklahoma and Texas to points in southern territory including Florida, Mississippi River crossings, Memphis, Tenn., and south.

Grounds for relief: Short-line distance formula and market competition with southern producing points.

Tariff: Supplement 43 to Southwestern Freight Bureau tariff I.C.C. 4155.

FSA No. 35607: *TOFC service—Rates between southwest and south.* Filed by Southwestern Freight Bureau, Agent (No. B–7598), for interested rail carriers. Rates on property moving on class and commodity rates loaded on trailers and transported on railroad flat cars between points in Arkansas, Louisiana, Missouri, New Mexico, Oklahoma, and Texas, on the one hand, and points in Alabama, Florida, Kentucky, Mississippi and Tennessee on the other.

Grounds for relief: Motor truck competition.

Tariff: Southwestern Freight Bureau tariff I.C.C. 4329 Southern Freight Association tariff I.C.C. S–77.

By the Commission.

[SEAL] HAROLD D. MCCOY, *Secretary.*

[F.R. Doc. 59-6477; Filed, Aug. 5, 1959; 8:47 a.m.]

[Notice 162]

MOTOR CARRIER TRANSFER PROCEEDINGS

AUGUST 3, 1959.

Synopses of orders entered pursuant to section 212(b) of the Interstate Commerce Act, and rules and regulations prescribed thereunder (49 CFR Part 179), appear below:

As provided in the Commission's special rules of practice any interested person may file a petition seeking reconsideration of the following numbered proceedings within 20 days from the date of publication of this notice. Pursuant to section 17(8) of the Interstate Commerce Act, the filing of such a petition will postpone the effective date of the order in that proceeding pending its disposition. The matters relied upon by petitioners must be specified in their petitions with particularity.

No. MC–FC 62214. By order of July 30, 1959, the Transfer Board approved the transfer to C. S. Walsh Transportation, Inc., Boston, Mass., of Certificate No. MC 26744, issued January 31, 1941, to C. S. Walsh, doing business as C. S. Walsh Transportation, Dorchester, Mass., authorizing the transportation of: Household goods, between Boston, Mass., and points in Massachusets within ten miles of Boston, on the one hand, and, on the other, points in Massachusetts, New Hampshire, New York, Connecticut, Maine, Vermont, New Jersey, and Rhode Island; and incinerators and refrigerator equipment, from Boston, Mass., to points in Massachusetts, Vermont, Connecticut, Maine, New Jersey, and New York. Milton Cook, 209 Washington Street, Boston, Mass., for applicants.

No. MC–FC 62318. By order of July 29, 1959, the Transfer Board approved the transfer to Karl E. Momsen, doing business as Momsen Trucking Co., Highway 71 and 18 North, Spencer, Iowa, of the operating rights in Certificate No. MC 41453, issued November 10, 1949, to F. L. Adams, Gravity, Iowa, authorizing the transportation of livestock and agricultural commodities, over regular routes, between Gravity, Iowa, and St. Joseph, Mo., and Omaha, Nebr., and general commodities, excluding household goods, and other specified commodities, over regular routes, between Sharpsburg, Iowa, and St. Joseph, Mo., and between Sharpsburg, Iowa, and Omaha, Nebr.

No. MC–FC 62344. By order of July 29, 1959, the Transfer Board approved the transfer to Valley Cab Company, Incorporated, Main St., Moodus, Conn., of Certificate in No. MC 108136, issued July 9, 1958, to Jack Axelrod, doing business as Valley Cab Co., Main Street, Moodus, Conn., authorizing the transportation of: Passengers and their baggage, in special operations, between points in the Town of East Haddam, Conn., on the one hand, and, on the other, points in the New York, N.Y., Commercial Zone, between points in the Towns of Colchester, Lebanon and Norwich, Conn., on the one hand, and, on the other, points in New York, N.Y.; between points in the Town of East Hampton, Conn., on the one hand, and, on the other, points in New York, N.Y.; between points in the Towns of Westbrook and Groton, Conn., on the one hand, and, on the other, points in New York, N.Y.

No. MC–FC 62345. By order of July 30, 1959, the Transfer Board approved the transfer to Robert W. Walkup, doing business as Spirit Lake Bus Lines, Box 658, Spirit Lake, Idaho, of Certificate in No. MC 111855 Sub 1, issued April 16, 1952, to Donald J. Rishling, Box 295, Spirit Lake, Idaho, authorizing the transportation of: Passengers and their baggage, over a regular route between Spirit Lake, Idaho, and Trentwood, Wash.

No. MC–FC 62371. By order of July 29, 1959, the Transfer Board approved the transfer to Evert Leinum of Ulen, Minn., of Certificate No. MC 101136, issued October 25, 1949, in the name of Lowell Cary, of Ulen, Minn., authorizing the transportation over irregular routes of farm machinery and parts (including

tractors) furniture and feeds, from Fargo, West Fargo, and Union Stock Yards, N. Dak., to points except municipalities, within 15 miles of Ulen, Minn.; general commodities, including household goods and bulk commodities, from Fargo, West Fargo, and Union Stock Yards, N. Dak., to Ulen, Minn.; and livestock and unprocessed agricultural commodities, between Ulen, Minn., and points within 15 miles of Ulen, except municipalities, on the one hand, and, Fargo, West Fargo, and Union Stock Yards, N. Dak., on the other. Evert Leinum, Ulen, Minn., for transferee and Lowell Cary, Ulen, Minn., for transferor.

No. MC–FC 62406. By order of July 30, 1959, the Transfer Board approved the transfer to R. L. Hoggs, Inc., West Point, Virginia, of the operating rights in Permits Nos. MC 2855 and MC 2855 Sub 3, issued February 5, 1953, and July 9, 1958, respectively, to Raymond Lee Hoggs, doing business as R. L. Hoggs, West Point, Virginia, authorizing the transportation, over irregular routes, of *lumber* and *cedar posts*, in truckload lots, from Pendleton, Trevilian, and Dumbarton, Va., to Baltimore, Ellicott City, and Sparrows Point, Md., points in Maryland within 25 miles of the District of Columbia, and those in the District of Columbia, lumber, from West Point, Va., to points in the District of Columbia and Maryland, *cross ties* and bridge timbers, from points within 20 miles of West Point, Va., not including West Point, to points in Pennsylvania, New Jersey, Delaware, Maryland, and the District of Columbia, except from points in Mathews and Gloucester Counties, Va., to Washington, D.C., and Baltimore, Md., and wooden pallets, from Shacklefords and Toano, Va., to points in the last described destination territory. The Transfer Board also approved the substitution of R. L. Hoggs, Inc., as applicant in Dockets Nos. MC 2855 Sub 4TA and MC 2855 Sub 5. Paul A. Sherier, 613 Warner Building, 13th and E Streets NW., Washington 4, D.C., for applicants.

No. MC–FC 62418. By order of July 29, 1959, the Transfer Board approved substitution of M & G Produce Carriers, Inc. of East Rutherford, N.J., as purchaser of the rights sought in No. MC 117195 in lieu of Joseph A. Maillet doing business as M & G Fruit & Produce Carriers, of East Rutherford, N.J., for the right to transport bananas from points in the New York, N.Y., Commercial Zone, as defined by the Commission, Baltimore, Md., and Philadelphia, Pa., to points in New York, Massachusetts, Ohio, Michigan, Illinois, and Pennsylvania; and from points in the New York, N.Y., Commercial Zone, as defined by the Commission, Baltimore, Md., and Philadelphia, Pa., to ports of entry on the International Boundary line between the United States and Canada, at or near Rouses Point, Alexandria Bay, Champlain, and Niagara Falls, N.Y., Derby Line, Vt., and Jackman and Calais, Maine, destined to points in Canada, moving in foreign commerce, under the "grandfather clause" of Section 7 of the Transportation Act of 1958. Edward M. Alfano, 36 West 44th Street, New York, N.Y., for applicants.

No. MC–FC 62430. By order of July 30, 1959, the Transfer Board approved the transfer to Roy R. Olson of New Richmond, Wis., of Certificate No. MC 111579 Sub 1, issued March 29, 1956, in the name of Ralph C. Knutson of New Richmond, Wis., authorizing the transportation over irregular routes, of livestock and agricultural commodities, between points in the Towns of Stanton, Cylon, Erin, Somerset and Star Prairie, St. Croix County, Wis., on the one hand, and, on the other, South St. Paul and Newport, Minn.; and feed, agricultural machinery, and fertilizer, from Minneapolis, St. Paul, South St. Paul, and Newport, Minn., to points in the Towns of Stanton, Cylon, Erin, Somerset, and Star Prairie, St. Croix County, Wis., with no transportation for compensation on return. A. R. Fowler, 2288 University Avenue, St. Paul 14, Minn., for applicants.

No. MC–FC 62443. By order of July 30, 1959, the Transfer Board approved the transfer to Floyd Christenson and D. N. Christenson, a partnership, doing business as Big Foot Transportation Co., 278 N. Main Street, Walworth, Wisconsin, of a certificate in No. MC 109123 issued May 17, 1949 to Floyd Christenson, 278 N. Main Street, Walworth, Wisconsin, authorizing the transportation of passengers and their baggage in the same vehicle with passengers, in round trip charter service, over irregular routes, beginning and ending at Walworth, Wisconsin, and extending to points in Illinois.

[SEAL] HAROLD D. McCOY,
Secretary.

[F.R. Doc. 59–6478; Filed, Aug. 5, 1959; 8:47 a.m.]

[No. 33147]

ERIE AND N.J. & N.Y. R.R.

Increased Suburban Fares

In the matter of assigning the time and place of hearing and prescribing special rules of practice.

It appearing that by petitions filed July 27, 1959, the Erie Railroad Company and The New Jersey and New York Railroad Company, Horace Banta, Trustee, seek authority from this Commission to increase their interstate passenger fares between points in Pennsylvania, New Jersey, New York and New York, N.Y., as follows:

To increase petitioners' regular one-way and round-trip interstate coach fares for distances up to 88 miles by adding 8 cents to the present minimum one-way fare and 10 cents to all other one-way fares, and to increase proportionately the round-trip fares up to 88 miles.

To increase the Erie's interstate unrestricted 10-trip ticket fares to reflect the proposed increase in regular one-way coach fares so that such fares will continue to bear the same relationship to regular one-way coach fares as now exists.

To cancel the Erie's present one-day interstate round-trip coach fares, and to increase present 30-day round-trip coach fares to the basis of 190 percent of the regular one-way coach fare, increased to 0 or 5 where necessary.

To increase monthly unrestricted or 54-trip, monthly restricted or 46-trip, monthly 27-trip, and weekly interstate commutation ticket fares between points on petitioners' lines in New York and in New Jersey, on the one hand, and Hoboken, New Jersey, and New York, N.Y., on the other, by adding $3.00 to monthly unrestricted commutation ticket fares, and by constructing the monthly restricted or 46-trip commutation ticket fares, monthly 27-trip ticket fares and the weekly commutation ticket fares on the basis of 90 percent, 50 percent, and 25 percent, respectively, of the unrestricted monthly commutation ticket fares, increased to 0 or 5 where necessary; and to increase intermediate interstate unrestricted and restricted monthly commutation fares by adding $3.00 to the unrestricted fare and applying 90 percent thereof for the restricted fare, increased to 0 or 5 where necessary.

It further appearing that in said petitions petitioners ask that all outstanding orders affecting such fares be modified so as to permit the proposed increased fares to be established and maintained;

And it further appearing that these petitions have been docketed under the above number and title:

It is ordered, That this proceeding shall be subject to special rules of practice as follows:

(1) Petitioners shall file their evidence in chief in the form of verified statements and supporting exhibits on or before August 10, 1959, with three copies to this Commission, one copy to the Board of Public Utility Commissioners of the State of New Jersey, and one copy to each of the parties listed in the appendix hereto, and to any other interested party upon request in writing addressed to J. T. Clark, General Attorney, 1336 Midland Building, Cleveland 15, Ohio, for the Erie, and R. S. Buell, Counsel, 40 Wall St., New York 5, N.Y., for the New Jersey & New York.

(2) Protests against the proposed increases in fares may be filed on or before August 20, 1959. Such protests should make reference to this proceeding by docket number and title, should state the grounds in support of the protest, and indicate in what respect the proposed increases are considered to be unlawful. The protests may be in letter form and an original only need be filed with this Commission, with copies to Messrs. Clark and Buell, representing petitioners. Unless orally objected to on the record at the hearing provided in paragraph 5, these protests will be received in evidence.

(3) Evidence in behalf of groups or associations either in support of or against the proposed increased rates, including evidence dealing with the cost of service or other technical matters, must be submitted in the form of verified statements (affidavits), with or without exhibits attached, on or before August 20, 1959, with three (3) copies to this Commission, one copy to the Board of Public Utility Commissioners, two copies to Messrs. Clark and Buell, together with a

copy to any other interested party requesting it.

(4) The Commission will take official notice of, and consider as part of the record in this proceeding, the annual, quarterly and monthly reports of the petitioners to this Commission for the period from 1946 to the date of this hearing.

Parties desiring to enter objection to the consideration of such documents, or any particular matter contained therein upon the ground of relevance or materiality, must orally enter such objection on the record at a timely stage of the hearing provided for in paragraph 5 hereof. The objection should specify the matter objected to and the reasons therefor.

(5) A hearing for the purpose of cross-examining witnesses who have filed verified statements and for the presentation of rebuttal evidence, if any, by petitioners, will be held in the Court Room, Village Hall, 131 North Maple Avenue, Ridgewood, N.J., beginning at 10 o'clock a.m., U.S. Standard Time (or 10:00 o'clock a.m. Daylight Saving Time, if that time is observed), on August 31, 1959, before Examiner Burton Fuller. Opportunity will also be given for the presentation of oral testimony in support of or in opposition to the proposed increased fares, by persons having an interest therein.

And it is further ordered, That a copy of this order shall be served upon petitioners and the parties listed below, and filed with the Board of Public Utility Commissioners, 100 Raymond Boulevard, Newark, N.J., and the Division of Federal Register, Washington, D.C.

Dated at Washington, D.C., this 31st day of July A.D. 1959.

By the Commission.

[SEAL] HAROLD D. McCOY, *Secretary.*

Felix G. Forlenza, Deputy Attorney General, 1100 Raymond Boulevard, Newark, N.J.

Nicholas Albano, City Hall, Newark, N.J.

W. B. Brown, Standard & Poor's Corp., Glen Ridge, N.J.

Augustus S. Dreier, 203 Park Avenue, Plainfield, N.J.

Lee L. Glezen, 110 Sagamore Road, Maplewood, N.J.

Joseph P. Hanrahan, City Hall, Hoboken, N.J.

Joseph Harrison, 17 Academy Street, Newark, N.J.

Charles W. Herr, 111 Maple Terrace, Stanhope, N.J.

G. Wallace Jarmon, Separation Engineering Corp., 110 East 42d Street, New York 17, N.Y.

Nicholas W. Kaiser, 786 Broad Street, Newark 2, N.J.

August W. Knauber, R.F.D. No. 1, White House Sta., N.J.

F. J. Sandri, City Hall, Clifton, N.J.

Clifford Mecouch, 357 Highland Avenue, Elberon, N.J.

Forrest K. Van Horn, 175 Prospect Street, Leonia, N.J.

George A. Olsen, 69 Tonnele Avenue, Jersey City 6, N.J.

[F.R. Doc. 59-6479; Filed, Aug. 5, 1959; 8:47 a.m.]

[No. 33148]

PENNSYLVANIA (N.Y. & L.B.) R.R.

Increased Commutation Fares

In the matter of assigning the time and place of hearing and prescribing special rules of practice.

It appearing that on July 30, 1959, The Pennsylvania Railroad Company filed a petition requesting this Commission to authorize it to increase its commutation fares between points in New Jersey on The New York and Long Branch Railroad Company, on the one hand, and New York, N.Y., on the other, by $3.00 in connection with its unrestricted monthly ticket, $2.70 in connection with its restricted monthly ticket, and 75 cents in connection with its weekly ticket;

And it further appearing that this proceeding has been docketed under the above number and title:

It is ordered, That this proceeding shall be subject to special rules of practice as follows:

(1) Petitioner shall file its evidence in chief in the form of verified statements and supporting exhibits on or before August 11, 1959, with three copies to this Commission and one copy to the Board of Public Utility Commissioners of the State of New Jersey, one copy to each of the parties listed in the appendix hereto, and one copy to any other interested party on request in writing addressed to Mr. R. R. Bongartz, General Attorney, The Pennsylvania Railroad Company, Transportation Center, 6 Penn Center Plaza, Philadelphia 4, Pa.

(2) Protests against the proposed increases may be filed on or before August 21, 1959. Such protests should make reference to this proceeding by docket number and title, should state the grounds in support of the protests, and indicate in what respect the proposed increases are considered to be unlawful. Protests may be in letter form and an original only need be filed with this Commission, with copy to Mr. Bongartz, representing the petitioner. Unless orally objected to on the record at the hearing provided in paragraph 5, these protests will be received in evidence.

(3) Evidence in behalf of groups or associations either in support of or against the proposed fares, including evidence dealing with the cost of service or other technical matters, must be submitted in the form of verified statements (affidavits), with or without exhibits attached, on or before August 21, 1959, with three (3) copies to this Commission, one copy to the New Jersey Board, two copies to Mr. Bongartz; together with a copy to any other interested party requesting it.

(4) The Commission will take official notice of, and consider as part of the record in this proceeding, the annual, quarterly and monthly reports of the petitioner to this Commission for the period from 1946 to the date of the hearing.

Parties desiring to enter objection to the consideration of such documents, or any particular matter contained therein upon the ground of relevance or materiality, must orally enter such objection on the record at a timely stage of the hearing provided for in paragraph 5 hereof. The objection should specify the matter objected to and the reasons therefor.

(5) A hearing for the purpose of cross examining witnesses who have filed verified statements and for the presentation of rebuttal evidence, if any, by petitioner, will be held at the Shrewsbury School, Broad St., Shrewsbury, N.J., beginning at 10:00 o'clock a.m., U.S. Standard Time (or 10:00 o'clock a.m., local Daylight Saving Time, if that time is observed), on September 2, 1959, before Examiner Burton Fuller. Opportunity will also be given at this session for the presentation of oral testimony in support of or in opposition to the proposed increased fares, by persons having an interest therein.

And it is further ordered, That a copy of this order shall be served upon petitioner, the parties listed below, and a copy filed with the Board of Public Utility Commissioners, 1100 Raymond Boulevard, Newark, N.J., and with the Director, Division of the Federal Register, Washington, D.C.

Dated at Washington, D.C., this 31st day of July A.D. 1959.

By the Commission.

[SEAL] HAROLD D. McCOY, *Secretary.*

Felix G. Forlenza, Deputy Attorney General, 1100 Raymond Boulevard, Newark 2, N.J.

James R. Minogue, 95 First Avenue, Atlantic Highlands, N.J.

Alfred Cerceo, 237 Alberson Avenue, Allenhurst, N.J.

Warren DeBrown, President, Jersey Shore Commuters Club, c/o Sunrise Place, Red Bank, N.J.

Julius J. Golden, 190 Broadway, Long Branch, N.J.

John A. Murray, 100 Williams Street, New York 38, N.Y.

Nicholas W. Kaiser, 786 Broad Street, Newark 2, N.J.

Milton A. Mausner, 34 Broad Street, Red Bank, N.J.

J. Crawford Compton, Belford, Middletown Township, N.J.

John W. Van Brunt, Councilman, Borough of Shrewsbury, Shrewsbury, N.J.

William J. O'Hagan, Jr., Allenhurst National Bank Building, Allenhurst, N.J.

Samuel Carotenuto, 34 Broad Street, Red Bank, N.J.

[F.R. Doc. 59-6480; Filed, Aug. 5, 1959; 8:47 a.m.]

DEPARTMENT OF JUSTICE

Office of Alien Property

HEINZ BAEHREN ET AL.

Notice of Intention To Return Vested Property

Pursuant to section 32(f) of the Trading With the Enemy Act, as amended, notice is hereby given of intention to return, on or after 30 days from the date of publication hereof, the following prop-

erty, subject to any increase or decrease resulting from the administration thereof prior to return, and after adequate provision for taxes and conservatory expenses:

Claimant, Claim No., Property, and Location

Heinz Baehren, Montero Dept., Sta. Cruz, Bolivia; $58.92 in the Treasury of the United States.

Johanna Grossmann, 68 Neersenerstrasse, Willich/Krefeld, Germany; $58.92 in the Treasury of the United States.

Claim No. 57107.

Mrs. Karoline Baehren, Senne I/Kreis Bielefeld, am Sennefriedhof 989, Germany; $14.73 in the Treasury of the United States.

Christel Kamp, Senne I/Kreis Bielefeld, Friedhofstr. 754, Germany; $22.09 in the Treasury of the United States.

Mrs. Karoline Baehren as natural guardian for the minor, Willi Baehren, Senne I/Kreis Bielefeld am Sennefriedhof 989, Germany; $22.10 in the Treasury of the United States.

Vesting Order Nos. 10530 and 17063; Claim No. 57455.

Executed at Washington, D.C., on July 30, 1959.

For the Attorney General.

[SEAL] PAUL V. MYRON,
Deputy Director,
Office of Alien Property.

[F.R. Doc. 59-6482; Filed, Aug. 5, 1959; 8:48 a.m.]

ALIDA DOOSEMAN ET AL.

Notice of Intention To Return Vested Property

Pursuant to section 32(f) of the Trading With the Enemy Act, as amended, notice is hereby given of intention to return, on or after 30 days from the date of publication hereof, the following property, subject to any increase or decrease resulting from the administration thereof prior to return, and after adequate provision for taxes and conservatory expenses:

Claimant, Claim No., Property, and Location

Alida Dooseman, Brussels, Belgium; $1,117.43 in the Treasury of the United States.

Betsy Piller, nee Dooseman, Antwerp, Belgium, and Alfred Julius Wolfferts, Amsterdam, Holland; all right, title and interest of the Attorney General acquired pursuant to Vesting Order No. 18521 (16 Fed. Reg. 10097, October 3, 1951) in and to: Central Pacific Railway Company 4/49, Bond No. 77282; Cities Service Company 5/58, Debentures Nos. 7675, 7676 and 7678; and Western Pacific Railroad Company 5/46, Bond Nos. 19037 and 19038, all in the principal amount of $1,000.00.

Vesting Order No. 18521; L.S. Claim No. 881.

Executed at Washington, D.C., on July 30, 1959.

For the Attorney General.

[SEAL] PAUL V. MYRON,
Deputy Director,
Office of Alien Property.

[F.R. Doc. 59-6483; Filed, Aug. 5, 1959; 8:48 a.m.]

FEDERICO KILIAN GLOSSNER AND ANA TERESA KILIAN DE PELAEZ

Notice of Intention To Return Vested Property

Pursuant to section 32(f) of the Trading With the Enemy Act, as amended, notice is hereby given of intention to return, on or after 30 days from the date of publication hereof, the following property, subject to any increase or decrease resulting from the administration thereof prior to return, and after adequate provision for taxes and conservatory expenses:

Claimant, Claim No., Property, and Location

Federico Kilian Glossner, $9,275.65 in the Treasury of the United States.

Ana Teresa Kilian De Pelaez, Emiliano Zapata 311, Leon, Gto., Mexico; $9,275.66 in the Treasury of the United States.

Vesting Order No. 11608; Claim No. 64320.

Executed at Washington, D.C., on July 30, 1959.

For the Attorney General.

[SEAL] PAUL V. MYRON,
Deputy Director,
Office of Alien Property.

[F.R. Doc. 59-6484; Filed, Aug. 5, 1959; 8:48 a.m.]

WILHELMINA RAHDER HOECK

Notice of Intention To Return Vested Property

Pursuant to section 32(f) of the Trading With the Enemy Act, as amended, notice is hereby given of intention to return, on or after 30 days from the date of publication hereof, the following property, subject to any increase or decrease resulting from the administration thereof prior to return, and after adequate provision for taxes and conservatory expenses:

Claimant, Claim No., Property, and Location

Wilhelmina Rahder Hoeck, Leiden, The Netherlands; $99,895.65 in the Treasury of the United States.

Vesting Order Nos. 6270 and 16722; Claim No. 11311.

Executed at Washington, D.C., on July 29, 1959.

For the Attorney General.

[SEAL] DALLAS S. TOWNSEND,
Assistant Attorney General,
Director, Office of Alien Property.

[F.R. Doc. 59-6485; Filed, Aug. 5, 1959; 8:48 a.m.]

LASZLO KISBERI (RISZDORFER)

Notice of Intention To Return Vested Property

Pursuant to section 32(f) of the Trading With the Enemy Act, as amended, notice is hereby given of intention to return, on or after 30 days from the date of publication hereof, the following property located in Washington, D.C., including all royalties accrued thereunder and all damages and profits recoverable for past infringement thereof, after adequate provision for taxes and conservatory expenses:

Claimant, Claim No., and Property

Laszlo Kisberi (Riszdorfer), 25, Marvany Street, Budapest XII, Hungary; Property described in Vesting Order No. 94 (7 F.R. 6693, August 25, 1942) relating to United States Patent Application Serial No. 357,992 (now Patent No. 2,378,433) and Divisional Patent Application Serial No. 591,105 (now Patent No. 2,503,768). Property described in Vesting Order No. 112 (7 F.R. 7785, October 1, 1942) relating to United States Letters Patent No. 2,286,833. Property described in Vesting Order No. 201 (8 F.R. 625, January 16, 1943) relating to United States Letters Patent Nos. 1,974,433; 2,000,037; 2,013,362; 2,013,363; 2,024,661; 2,059,032; 2,076,481; 2,076,482; 2,100,672; 2,167,053; 2,169,927; 2,188,820; 2,193,325; 2,194,152 and 2,213,942. Property described in Vesting Order No. 1184 (8 F.R. 7035, May 27, 1943) relating to United States Letters Patent Nos. 2,032,633 and 2,091,881 and Reissues 20,486 and 21,210.

Vesting Order Nos. 94, 112, 201 and 1184; Claim No. 46780.

Executed at Washington, D.C., on July 30, 1959.

For the Attorney General.

[SEAL] PAUL V. MYRON,
Deputy Director,
Office of Alien Property.

[F.R. Doc. 59-6486; Filed, Aug. 5, 1959; 8:48 a.m.]

GAEL ANTOINE MARIE SEBRAN DE ROHAN-CHABOT ET AL.

Amended Notice of Intention To Return Vested Property

The Notice of Intention To Return Vested Property insofar as it refers to Mme. Marguerite Marie Madeleine Evelina Comtesse de Rohan-Chabot, which was published in the FEDERAL REGISTER on March 7, 1958 (23 F.R. 1650), pursuant to section 32(f) of the Trading With the Enemy Act, as amended (50 U.S.C. App. 32(f)), is hereby amended to delete therefrom the name of Mme. Marguerite Marie Madeleine Evelina Comtesse de Rohan-Chabot, and substituting the following names in her stead:

Gaël Antoine Marie Sebran de Rohan-Chabot; Sebran Louis Marie Pierre de Rohan-Chabot; Mme. Marthe Marie Louise Catherine Jeanne de la Rochefoucauld; Gaël Antoine Marie Sebran de Rohan-Chabot, as legal guardian for the minors, Louis Pierre Marie Bernard de Rohan-Chabot and Jean Louis Marie Pierre de Rohan-Chabot—all of Paris, France.

Executed at Washington, D.C., July 30, 1959.

For the Attorney General.

[SEAL] PAUL V. MYRON,
Deputy Director,
Office of Alien Property.

[F.R. Doc. 59-6488; Filed, Aug. 5, 1959; 8:48 a.m.]

ITSUO OKIDA

Notice of Intention To Return Vested Property

Pursuant to section 32(f) of the Trading With the Enemy Act, as amended, notice is hereby given of intention to return, on or after 30 days from the date of publication hereof, the following property, subject to any increase or decrease resulting from the administration thereof prior to return, and after adequate provision for taxes and conservatory expenses:

Claimant, Claim No., Property, and Location

Itsuo Okida, also known as Harry Itsuo Okida and as Itsuo Harry Okida, Hiroshima, Japan; $1,161.90 in the Treasury of the United States.

Vesting Order No. 8145; Claim No. 7831.

Executed at Washington, D.C., on July 30, 1959.

For the Attorney General.

[SEAL] PAUL V. MYRON,
Deputy Director,
Office of Alien Property.

[F.R. Doc. 59-6487; Filed, Aug. 5, 1959; 8:48 a.m.]

CUMULATIVE CODIFICATION GUIDE—AUGUST

A numerical list of the parts of the Code of Federal Regulations affected by documents published to date during August. Proposed rules, as opposed to final actions, are identified as such.